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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 361

E. W. CLARK, COMMISSIONER OF INSURANCE OF THE STATE OF IOWA, AS RECEIVER OF FEDERAL SURETY COMPANY, PETITIONER,

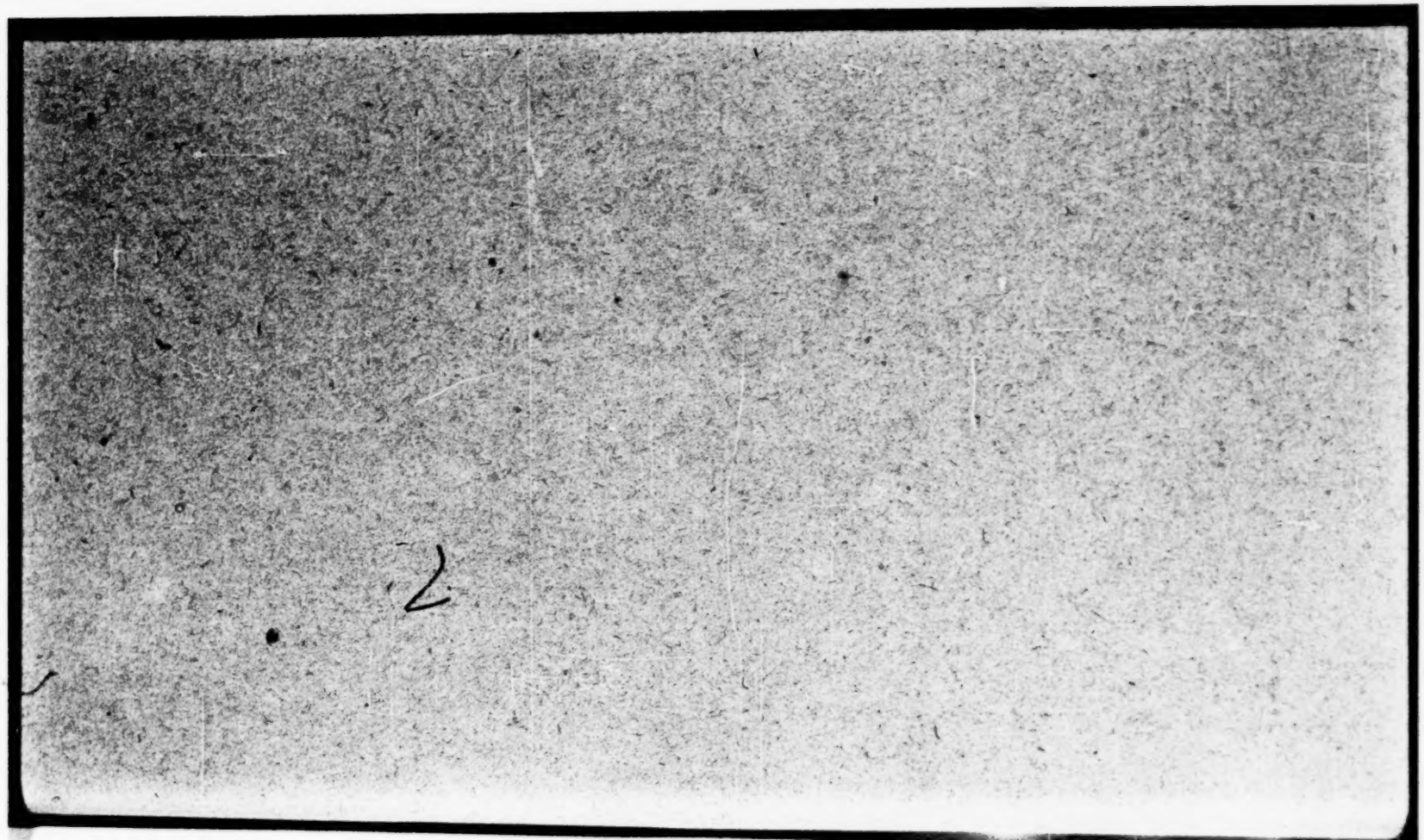
vs.

HARRY O. WILLIARD, W. W. WHEATON AND C. W. HAY, AS TRUSTEES OF GORDON CAMPBELL-KEVIN SYNDICATE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA.

PETITION FOR CERTIORARI FILED SEPTEMBER 10, 1934.

CERTIORARI GRANTED OCTOBER 15, 1934.



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[fol. 91]

UNITED STATES OF AMERICA, SS:

(Seal of the Supreme Court of the United States)

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Montana, Greeting:

Whereas, lately in the Supreme Court of the State of Montana, before you, or some of you, in a cause entitled John Mieyr, Respondent, vs. Federal Surety Company of Davenport, Iowa, a Corporation, and E. W. Clark, as Receiver of Federal Surety Company of Davenport, Iowa, Respondents; Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, a Common law Trust, and Gordon Campbell-Kevin Syndicate, a Common-law Trust, Appellants, No. 7074, wherein the decree of the said Supreme Court, entered in said cause on the 1st day of April, A. D. 1933, is in the following words, viz:

"This cause came on for decision and judgment. For reasons stated in the opinion, the judgment and orders appealed from are reversed, and the cause remanded for further proceedings in accordance with the views expressed in the opinion. Opinion Per Curiam, concurred in by Mr. Chief Justice Callaway and Justices Matthews, Stewart and Anderson. Mr. Justice Angstman filed a dissenting opinion.

"There being no further matter presented the court went into recess."

[fol. 92] as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Supreme Court of The United States by virtue of a writ of certiorari granted upon the petition of E. W. Clark, as Receiver, whereon Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, et al., were made the parties respondent, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and thirty-three,

the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court, in this cause be, and the same is hereby, vacated, with costs, insofar as it adjudges the validity and priority of respondents' execution; and that the said E. W. Clark, as Receiver, recover against the said Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, et al., Two Hundred and Seventy Dollars and Seventy-five Cents for his costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

April 2, 1934.

[fol. 93] And the same is hereby remanded to you, the said Judges of the said Supreme Court of the State of Montana, in order that such execution and further proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of certiori notwithstanding.

Witness the Honorable Charles E. Hughes, Chief Justice of the United States, the thirtieth day of April, in the year of our Lord one thousand nine hundred thirty-four.

Costs of E. W. Clark, Receiver:

Clerk	$71.10
Printing Record	179.65
Attorney	20.00
	$270.75

Charles Elmore Cropley, Clerk of the Supreme Court of The United States.

[Endorsed:] Original. File No. 7074. Supreme Court of the United States No. 449. October Term, 1933. E. W. Clark, as Receiver, vs. Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, et al. Filed May 3, 1934. J. W. Crosby, Clerk of Supreme Court, State of Montana. Mandate.

[fol. 94] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1933

Costs of E. W. Clark, as Receiver in No. 449

1933, October Term—Docketing cause and filing record, $10.00; appearance, .25; filing precipe, .25, and receipt, .25; filing papers, $8.75; filing briefs, $5.00; submission, .20; order, .20; filing and recording, .65; certified copy of the order, $2.50; certificate of filing, $2.00; filing papers, ; filing briefs, $5.00; argument, .20; decree, $1.00; filing same, .25; recording, .40; mandate, $5.00; preparing record for printer, etc., $28.80; cost of printing record, $179.65; attorney's docket fee, $20.00; costs and copy, .40 ..... $270.75.

Fee Book, page 38052.

Teste:

Charles Elmore Cropley, Clerk of the Supreme Court of the United States. (F. W. Barr.)

[fol. 95] MINUTES OF THE SUPREME COURT, FIFTIETH DAY OF MARCH TERM, 1934

Monday, May 14, 1934.

Court convened pursuant to recess.

Present: The Hon. Lew. L. Callaway, Chief Justice; The Hon. Albert H. Angstman, Associate Justice; The Hon. John A. Matthews, Associate Justice; The Hon. S. V. Stewart, Associate Justice; The Hon. Ralph J. Anderson, Associate Justice; O. T. Crane, Acting Clerk; Floyd O. Small, Marshal.

And the following proceedings were had:

7074

JOHN MIEYR, Respondent,

v.

FEDERAL SURETY COMPANY, et al., Respondents; HARRY O. WILLIARD, et al., Appellants

It is ordered that this cause be set for argument on June 15, 1934, at ten o'clock a. m., at which time the Court

will hear argument from respective counsel touching the effect and direction of the Mandate of the Supreme Court of the United States, filed herein under the title of Clark, receiver.

There being no further matter presented the Court went into recess.

Lew. L. Callaway, Chief Justice.

Attest: O. T. Crane, Acting Clerk.

[fol. 96] MINUTES OF THE SUPREME COURT, EIGHTH DAY OF JUNE TERM, 1934

Friday, June 15, 1934.

Court convened pursuant to recess.

Present: The Hon. Lew. L. Callaway, Chief Justice; The Hon. Albert H. Angstman, Associate Justice; The Hon. John A. Matthews, Associate Justice; The Hon. S. V. Stewart, Associate Justice; The Hon. Ralph J. Anderson, Associate Justice; J. W. Crosby, Clerk; Floyd O. Small, Marshal.

And the following proceedings were had:

7074

JOHN MIEYR, Respondent,

v.

FEDERAL SURETY COMPANY, et al., Respondents; HARRY O. WILLIARD, et al., Appellants

This matter came on regularly for argument on the question as what manner of judgment should be rendered by this Court to conform to the opinion and Mandate of the Supreme Court of the United States in this cause. H. Leonard DeKalb, Esq., and Louis P. Donovan, Esq., appearing as counsel for the appellants and M. S. Gunn, Esq., appearing for the respondents. After argument by respective counsel the cause was submitted for decision.

There being no further matter presented the Court went into recess.

Lew. L. Callaway, Chief Justice.

Attest: J. W. Crosby, Clerk.

[fol. 97] State of Montana

IN THE SUPREME COURT, JUNE TERM, 1934

No. 7074

JOHN MIEYR, Plaintiff and Respondent,

v.

FEDERAL SURETY COMPANY OF DAVENPORT, IOWA, A Corporation, and E. W. Clark, as Receiver of Federal Surety Company of Davenport, Iowa, Defendants and Respondents; D. A. Crichton, Ancillary Receiver, Respondent; Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, a Common Law Trust, and Gordon Campbell-Kevin Syndicate, Appellants

Submitted June 15, 1934.
Decided July 24, 1934.
Filed July 24, 1934.

J. W. Crosby, Clerk.

[fol. 98] Mr. Justice ANDERSON delivered the Opinion of the Court:

This cause was heretofore before this court. (94 Mont. 508, 23 Pac. (2d) 959.) The decision there rendered was reviewed by the Supreme Court of the United States. (Clark v. Williard (U. S.), 78 L. Ed. 743.) The facts in detail are stated in our former opinion. The following brief summary of the facts, however, is sufficient for the solution of the question now before us:

Williard and others brought a suit in the district court of Fergus county against the Federal Surety Company. A trial was had, resulting in a judgment of nonsuit, which was reversed on appeal. (Williard v. Federal Surety Co., 91 Mont. 468, 8 Pac. (2d) 633. The courts of Iowa adjudged the dissolution of the Federal Surety Company and appointed Clark receiver for the company. Mieyr, a simple contract creditor, sought in the district court of Cascade county the appointment of an ancillary receiver of the assets of the surety company in Montana. The application was resisted by Clark. The case of Williard v. Federal

Surety Company was again tried and judgment rendered in favor of Williard et al. Leave was sought and granted by the district court of Cascade county to levy execution issued on the Fergus county judgment upon property belonging to the surety company within the state of Montana. Levy of execution was made. Clark, by separate petition setting forth the judgment of the Iowa court and the statutory law of that state applicable thereto, joined in the request of Mieyr to secure the appointment of an ancillary receiver for the assets of the surety company in Montana. A revocation of the leave granted to levy the execution was sought and granted. These various events, without reference to the dates, occurred in the order recited.

On the former appeal to this court it was decided that [fol. 99] Mieyr, being only a simple contract creditor, was not entitled to secure the appointment of a receiver, that the suit in Fergus county did not abate, and the judgment there rendered was a valid judgment. These conclusions were affirmed by the Supreme Court of the United States. We further decided on the former appeal that the status of Clark was that of a mere equity receiver, and accordingly the property of the surety company was subject to attachment and levy on execution under the laws of this state. The Supreme Court of the United States held that we misjudged the quality of the title of Clark; that, under the statutes of Iowa, Clark was the official liquidator—the successor to the corporation—and not a mere equity receiver, and that his title is the consequence of a succession established for the corporation by the law of its creation. In our former opinion holding the levy of the execution good as against the claim of Clark on the theory that he was not a statutory liquidator, but only an equity receiver, we expressed no opinion as to whether the same result would obtain if we recognized his status to be that as determined by the Supreme Court of the United States. The cause was remanded to us with the following directions: "The Supreme Court of Montana will determine whether there is any local policy whereby an insolvent foreign corporation in the hands of a liquidator with title must submit to the sacrifice of its assets or to their unequal distribution by writs of execution."

By this mandate we are commanded to determine, and thereby declare, the policy of the laws of this state. This

court, in the case of State v. Gateway Mortuaries, Inc., 87 Mont. 225, 287 Pac. 156, said: "What is the public policy of a state, and what is contrary to it, is not to be measured by the private convictions or notions of the persons who happen to be exercising judicial functions, but by reference to the enactments of the lawmaking power, and, in the absence of them, to the decisions of the courts. When, however, the legislature has spoken upon a particular subject and within [fol. 100] the limits of its constitutional powers, its utterance is the public policy of the state. (Mr. Chief Justice Brantly, in MacGinniss v. Boston & Mont. C. C. & S. M. Co., 29 Mont. 428, 75 Pac. 89, and Parchen v. Chessman, 49 Mont. 326, Ann. Cas. 1916A, 681, 143 Pac. 631, 148 Pac. 469.)"

Being mindful of the fact that we have under consideration the assets of a dissolved foreign corporation and the claim of a statutory liquidator to the assets, we must, in determining the public policy, first give consideration to the state of the law with reference to dissolved domestic corporations, lest we lead to discriminations within the prohibitions of the Fourteenth Amendment to the federal Constitution.

Section 6011, Revised Codes 1921, provides that "unless other persons are appointed by the court, the directors of any corporation, at the time of its dissolution by expiration of its charter or otherwise, are trustees of the creditors and stockholders or members of such corporation, and have full power to settle and liquidate its affairs, and such trustees, or a majority thereof, or in case of the death of one or more of such trustees, a majority of such survivors, are authorized to execute grants and conveyances of both real and personal property of such dissolved corporation. * * * ."

Section 9303, Id., relates to the appointment of receivers for dissolved corporations. Subdivision 6 of Section 9301 authorizes the appointment of receivers for dissolved or insolvent corporations, but only in actions pending. Under this section there cannot be such a thing as an action brought distinctly and solely for the appointment of a receiver. (State ex rel. First T. & S. Bank v. District Court, 50 Mont. 259, 146 Pac. 539.) Since the only purpose of this proceeding in the lower court was the appointment of a receiver, section 9301 is without application.

This court had before it for construction sections 6011 [fol. 101] and 9303 in the case of Ferrell v. Evans, 25 Mont. 444, 65 Pac. 714, wherein it was said: "Section 561 of the Civil Code [sec. 6011, Rev. Codes 1921] constitutes the directors of a corporation dissolved for any reason trustees for the creditors and shareholders, with full power to wind up its affairs, unless some other person be appointed for that purpose. No exception is made in case of insolvency. The intention of the legislature seems to have been to provide the most inexpensive and expeditious way for the administration of the affairs of a defunct corporation by confiding them in the hands of those who are best acquainted with them, and have a direct personal interest in preserving and appropriating the assets to their legitimate purposes, subject to an accounting or removal by a court of equity at the instance of a shareholder or creditor whose rights are jeopardized or betrayed. (Havemeyer v. Superior Court, 84 Cal. 327, 24 Pac. 121, 10 L. R. A. 627, 18 Am. St. Rep. 192.) In no case, however, will a court resort to a removal of a statutory receiver, and appoint one in his stead, until it is made to appear that the person complaining has been, or is about to be, injured by an unwarranted procedure on his part. In this case, as we have seen, the associaiton was not insolvent."

The trustees of a dissolved corporation acting pursuant to section 6011, may be sued in the courts. (Gilna v. Barker, 78 Mont. 357, 254 Pac. 174.) The property of the dissolved corporation so being administered, is subject to attachment in the same manner and in the same cases where a writ of attachment would run against the property of the corporation itself. (Gilna v. Barker, 78 Mont. 343, 254 Pac. 169; see, also, Gilna v. Fidelity & Deposit Co., 83 Mont. 231, 272 Pac. 540.) Since the property of the dissolved corporation in the hands of the statutory trustees may be attached, preferences to creditors will logically follow. The question, therefore, arises, May the court, under the provisions of section 9303 appoint a receiver in [fol. 102] cases where the assets of a dissolved corporation are insufficient to pay the debts, and thereby secure a ratable distribution of its assets, and so prevent their unequal distribution?

It has been suggested that unless the provisions of section 9303 are held to so authorize the appointment of a

receiver, there is little excuse for the existence of the section. Numerous situations, however, may arise where the necessity of a receiver would be apparent and where the provisions of the section would afford the court authority for the appointment of a receiver aside from the suggested situation, as, where all the statutory trustees are dead, incompetent or beyond the jurisdiction of the court; or where the trustees refuse or absolutely fail to perform the duties imposed upon them by the statute; or upon any other ground which would justify a court in removing them from their office aside from preventing the unequal distribution of the assets among the creditors where the funds of the dissolved corporation are insufficient to pay the debts.

As this court pointed out in the case of Ferrell v. Evans, supra the directors of a dissolved corporation, for any cause, become the statutory trustees, and insolvent corporations are not excluded from the operation of the statute.

A debtor may pay one creditor in preference to another. (Sec. 8601, Rev. Codes 1921.) An insolvent corporation, in the absence of statutory prohibition, may prefer one creditor over another, the rule being the same with reference to corporations as it is to individuals. (Ames & Frost v. Heslet, 19 Mont. 188, 47 Pac. 805.) It was there contended that a different rule should prevail with reference to corporations from the prevailing rule applicable to individuals. In response to the argument the court said: "The policy of allowing such preferences may be pernicious, even more so that that of allowing an insolvent individual to [fol. 103] prefer creditors; but in the one case, as in the other, it is for the legislature to decide the question of policy, not the court."

The legislature in the enactment of section 6011 having included all dissolved corporations, and having failed to exempt from its provisions insolvent corporations, whatever the rule may have been or may now be elsewhere at common-law, the rule in this state is that there is no common law in any case where the law is declared by the Code or statute. (Sec. 10703, Rev. Codes 1921; Truro v. Passmore, 38 Mont. 544, 100 Pac. 966; Gillispie v. Great Northern Ry. Co., 63 Mont. 598, 208 Pac. 1059; State v. Newman, 66 Mont. 180, 213 Pac. 805.)

We therefore conclude that the courts of this state will not appoint a receiver to supplant the statutory trustees of

a dissolved insolvent corporation upon the sole and only ground of preventing the unequal distribution of its assets.

This court in the case of Rohr v. Stanton Trust & Savings Bank, 76 Mont. 248, 245 Pac. 947, applied the general principle of equity that the assets of an insolvent corporation are to be distributed ratably among general creditors in the distribution of assets of a bank, and held that a general creditor might not secure a preference over the other creditors. The principles therein announced, however, are declared by statutes then and now in existence and relating only to banking corporations. At the time of the rendition of the decision under discussion, the liquidation of insolvent banks are provided for in involuntary proceedings by section 6079, Revised Codes 1921; and Chapter 90 of the Laws of 1923 authorized the liquidation thereof by stockholders. Likewise in the same chapter, section 6109h provided that "no property owned by any bank organized under the laws of the state of Montana shall be subject to attachment." This enactment was carried forward without alteration as section 96, Chapter 89, Laws of 1927. Sections 121 to 138 of Chapter 89, provide the man-[fol. 104] ner now existing for the liquidation of insolvent banks under the supervision of the superintendent of banks, which likewise assures the ratable distribution of the assets of an insolvent bank.

Since the decision in the Stanton case and subsequent thereto, with the right of attachment as against the bank denied by statute, it was and is impossible for a creditor whose claim was not reduced to judgment, to secure a preference against a banking corporation through involuntary proceedings. No like statutes exist with reference to the attachment of the property of other corporations or persons. The property of all persons and corporations, other than banking corporations, unless exempt from execution, is subject to attachment in any action upon a contract, express or implied, for the direct payment of money, where the contract is not secured by mortgage or pledge. (Sec. 9256, Rev. Codes 1921.) True, attachments against many insolvent corporations and individuals may be released and a preference avoided by recourse to proceedings under the bankruptcy law. Banking and insurance companies may not become bankrupts, either voluntary or involuntary. (11 U. S. C. A., Sec. 22.) Wage earners and persons engaged

either in farming or chiefly in the tillage of the soil may not be adjudged involuntary bankrupts. (Id.)

As to persons and corporations who may not be adjudged involuntary bankrupts, and as against whom writs of attachment may issue, no exception is made under our law whereby, as to such persons or corporations if insolvent, preferences resulting from attachments may be released at the instance of other creditors, resident or otherwise. The relegation of the creditors of insolvent corporations or individuals to a race of diligence "may be pernicious in its effect and may not result in justice according to judicial notion. The legislature has by the all-inclusive attachment laws made them applicable to all persons and corporations (except banking corporations) alike, without regard to the [fol. 105] solvency or insolvency of the attachment debtors. The legislature has spoken; it has declared the policy of the state, which is binding upon us.

It may be well to note in passing that the rights to secure writs of attachment in this state are available to residents and non-residents alike, as against residents and non-residents alike. A non-resident may come into Montana and secure a writ of attachment upon exactly the same terms as one of its citizens.

Full faith and credit must be given to the decree of the Iowa court and the statutes of that state in this respect, that Clark was entitled to the property, not as an ordinary receiver, but as a quasi-assignee of the dissolved corporation by force of statute entitled of right to defend or sue in its stead in this state. (United States Truck Co. v. Pennsylvania Surety Corporation, 259 Mich. 422, 243 N. W. 311.) But the laws of the state of Iowa do not have extraterritorial force. Rights and remedies of property are governed by the laws of the state in which it is situate. The statutory assignment can only be given force in other states on the ground of comity, not by constitutional mandate. (United States Truck Co. v. Pennsylvania Surety Corporation, supra; Martyne v. American Union Fire Ins. Co., 216 N. Y. 183, 110 N. E. 502, 23 L. R. A. 52.) The Supreme Court of the United States has written in the case of Disconto Gesellschaft v. Umbreit, 208 U. S. 570, 28 Sup. Ct. 337, 52 L. Ed. 625: " 'Comity,' in the legal sense," says Mr. Justice Gray, speaking for this court in Hilton

v. Guyot, 159 U. S. 113, 163, 16 Sup. Ct. 139, 40 L. Ed. 95, "is neither a matter of absolute obligation on the one hand nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows in its territory to the legislative, executive or judicial acts of another nation, having due regard both to the international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws. [fol. 106] * * *. Speaking of the doctrine of comity, Mr. Justice Story says: 'Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasions on which its exercise may be justly demanded.' (Story on Conflict of Laws, sec. 33.) * * * The doctrine of comity has been the subject of frequent discussion in the courts of this country when it has been sought to assert rights accruing under the assignments for the benefit of creditors in other states as against the demands of local creditors, by attachment or otherwise in the state where the property is situated. The cases were reviewed by Mr. Justice Brown, delivering the opinion of the court in Security Trust Co. v. Dodd, Mead & Co., 173 U. S. 624, 19 Sup. Ct. 545, 43 L. Ed. 835, and the conclusion reached that voluntary assignments for the benefit of creditors should be given force in other states as to property therein situate, except so far as they come in conflict with the rights of local creditors, or with the public policy of the state in which it is sought to be enforced; and, as was said by Mr. Justice McLean in Oakey v. Bennett, 11 How. 33, 44, 'national comity does not require any government to give effect to such assignment [for the benefit of creditors] when it shall impair the remedies or lessen the securities of its own citizens.'"

It must be borne in mind that Clark, the statutory liquidator, did not appear in the courts of Montana and assert the right to have a receiver appointed until long after the levy of the execution. As was pointed out in the case of Clark v. Williard, supra, there is no invariable rule by which the title of a statutory liquidator must prevail over executions and attachments outside the state of his appointment. There are many cases there collected which lay down the rule that the title of such a liquidator will have recognition and enforcement everywhere without exception. Others

take the view that the claims of local creditors who have by process attached a lien upon the assets of the dissolved [fol. 107] corporation are entitled to precedence under facts in the material essentials in nowise different from the one now before us. (Lackmann v. Supreme Council O. C. & F., 142 Cal. 122, 75 Pac. 583; Zacher v. Fidelity Trust & Co., 109 Ky. 441, 59 S. W. 493; Schloss v. Metropolitan Surety Co., 149 Iowa, 382, 128 N. W. 384.) In the Iowa case a statutory liquidator of a dissolved insurance corporation from the state of New York was contesting the right of an attaching creditor within the state of Iowa to certain funds then under attachment. The Iowa court refused, on the principle of comity, to recognize the right of the foreign liquidator. Here we have an Iowa liquidator under a similar statute seeking the funds of the dissolved corporation upon the same principle of comity. The Iowa court, in reaching this conclusion said: "The well-settled rule in this state is that the claim of a foreign receiver to funds of the corporation found in this state will not be recognized even by way of comity if the result would be to relegate the creditors of the corporation in this state to the relief to which they would be entitled in a foreign jurisdiction, when there are funds of the corporation in the state from which such claims may be satisfied." After reviewing numerous decisions cited in the opinion in Clark v. Williard, supra, in support of the opposite theory, and holding them without application, the court further said: "It must be borne in mind that the receiver here defending is simply a receiver of an insolvent company who is by the corporation laws of New York authorized to collect the debts, preserve the property, and distribute the assets of the company among its creditors, and we fail to see how any receiver thus provided for can in this state, as against the established rule of our law, take the company's assets found in this state and seized for the plaintiff in an attachment proceeding, out of our state without satisfying the valid claim of the attaching creditor, and compel him to resort to the courts of New York for the purpose of secur- [fol. 108] ing payment of such claim." The Iowa court adhered to its pronouncements made in the Schloss case, in Reed v. Hollingsworth, 157 Iowa, 94, 135 N. W. 37.

In the case of In re Nelson & Brother Co., 149 Fed. 586, where it was sought, on the principle of comity, to secure

the validation of an assignment of creditors in a foreign state, and where the state of its origin by settled rule of decision had declined to accord extraterritorial vitality to like assignments, the court refused to recognize the assignment; and in the course of its opinion, speaking with reference to the principle of comity, said: "It involves reciprocity, and it appears to me to be clearly against the policy of any state to grant to the citizens of another jurisdiction a privilege from which its own citizens are debarred by the repeated decisions of the highest court of said jurisdiction. I am therefore of opinion that, upon principles of public policy, the claims of the attaching creditors are to be preferred to that of the assignor."

If the dissolved corporation were in Montana, and a statutory liquidator appointed in Montana under statutes identical with those of Iowa were making a like claim as against an attaching creditor under like circumstances, the Iowa courts under their established rules of decision would decline to accord the liquidator the right to secure priority over the attaching creditor. We, therefore, conclude that the liquidator from Iowa is entitled to receive no more consideration at the hands of our courts than would our citizens under like circuumstances in theirs.

It is argued by counsel for Clark that under the authority of Blake v. McClung, 172 U. S. 329, 20 Sup. Ct. 307, 43 L. Ed. 432, it is not within the power of the state to grant a preference or priority to local creditors over those from other states, by reason of the declaration in section 2, Article XIV, of the federal Constitution, providing that "the citizens of each state shall be en*e*ntitled to all privi- [fol. 109] leges and immunities of citizens in the several states." In the Blake case a statute of Tennessee provided generally that foreign mining corporations might operate in the state by complying with the provisions of the Act; that the corporations coming within the Act and their property were liable for their debts, to be enforced in the manner provided by law for the application of the property of natural persons to the payment of their debts, but creditors, residents of the state, were to be accorded a priority in the distribution of the assets of the corporation over creditors residing without the state. These facts clearly distinguish that case from the one at bar. Here, any creditor, whether resident or not, was free at the time the levy of the execu-

tion was made, to secure an attachment against the property of the Federal Surety Company. There is no denial of any privilege accorded to a Montana creditor to any nonresident creditor.

The cause is remanded to the district court of Cascade county with direction to modify the order of August 25, 1932, to the end that the lien of appellants acquired by virtue of the levy of the execution is determined to be valid as against and prior to the claim of the respondent Clark, and of the receiver appointed by the district court; that the claim of the respondent Clark, and of the receiver so appointed, is superior to the claim of all persons attempting to assert a lien on the assets of the Federal Surety Company which was not perfected prior to August 3, 1932. The order of August 25, 1932, will, when so modified, stand affirmed. The appellants will recover their costs in this court.

Ralph J. Anderson, Associate Justice.

We concur:

John A. Matthews, S. V. Stewart, Associate Justices

[fol. 110] Mr. Chief Justice CALLAWAY dissenting:

The Supreme Court of the United States has directed us to determine whether there is any local policy in this state whereby an insolvent foreign corporation in the hands of a liquidator with title must submit to the sacrifice of its assets or to their unequal distribution by writs of execution. In its discussion before reaching that direction, the Supreme Court said: "No statute or decision brought to our notice from Montana removes the question from the field of doubt. True, there are the statutes heretofore referred to whereby suit may be maintained against foreign corporations after dissolution on the same basis as against domestic ones. Nothing in those provisions declares the existence of a policy to allow the assets of an insolvent corporation to be torn to pieces at the suit of rival creditors when they could be distributed equally and without sacrifice at the hands of a receiver."

I do not know of any such policy announced by statute or decision in this state, and determine the question in the negative.

The Supreme Court agrees with the statement in the original opinion of this court promulgated April 1, 1933, that

the judgment of the respondents against the Federal Surety Company is valid, but does not agree that the levy of execution was valid. To make its decision upon that point certain, it declared "the decree should be vacated in so far as it adjudges the validity and priority of the respondents' execution, * * *", taking the view that before the respondents were in a position to issue execution, the situation had been complicated by the suit filed by Mieyr for the purpose of obtaining an ancillary receivership to preserve the local assets.

I think it is unnecessary to discuss the question whether in the circumstances the appointment of Crichton on March 25, 1932, was valid, whether made under section 9301 or [fol. 111] 9303, Revised Codes 1921. It seems to me that when Clark on August 3 served and filed an answer and cross-petition in the action wherein he pleaded the dissolution of the Federal Surety Company, and his appointment as "receiver and/or liquidator" under the laws of Iowa and that title to all the surety company's property passed to him, alleging that the assets should be distributed ratably to all creditors "subject to any liens and rights of creditors acquired on or prior to September 25, 1931, in or to specific property," and wherein he asked that Crichton be retained as receiver, the district court of Cascade county then had authority to appoint, or re-affirm, the appointment of Crichton as receiver.

The Supreme Court has declared that this court denied full faith and credit to the statutes and judicial proceedings of Iowa in holding that Clark was a receiver deriving title through a judicial proceeding, and not through the charter of Federal Surety Company's being and the succession there prescribed.

After a careful consideration of the authorities I am satisfied that the action of the district court of Cascade county on August 25, 1932, wherein that court held that the existence of the Federal Surety Company was terminated by the proceedings in Iowa, and that the title to all its property passed to Clark as receiver (charter liquidator), and should be distributed ratably to all creditors "subject to any liens and rights of creditors acquired on or prior to September 25, 1931, in or to specific property" was correct. The court then confirmed the appointment of Crichton as

ancillary receiver and directed that he receive proof of claims of all Montana creditors by requiring the claims to be filed with the clerk of the court in Cascade county, and provided further that when the claims allowed by its order were allowed by the Iowa court as entitled to share with the other claims of similar rank, Crichton should transmit and remit to the clerk all money and property in his hands as receiver, except such as were determined by the district [fol. 112] court of Cascade county to be subject to specific lien, and such as might be necessary to pay the costs of proceedings in Montana, including the compensation of Crighton. It also provided that in the event claims allowed by the district court of Cascade county were not allowed in such manner as to permit claimant to share ratably with all other creditors of the surety company, then the money and property in the hands of Crichton should be retained by Crichton for distribution to creditors whose claims were allowed by order of the District court of Cascade county. The decree directed all persons to deliver to Crichton all money and property belonging to the surety company. It also revoked the order of May 24, 1932, granting permission to Williard, Wheaton and Hay, as trustees, to levy their execution. (Mieyr v. Federal Surety Co., 94 Mont. 508, 23 Pac. (2d) 959.)

Of course, attachments existing upon specific property or judgments being a lien upon real estate prior to the dissolution of the Federal Surety Company would have been preferred claims and payable as such, but the judgment of Williard, Wheaton and Hay, as trustees, was not a preferred claim. This judgment was not a lien on the property of the surety company when Mieyr began his action.

In the absence of preferred claims, I think it is the rule, sustained by the great weight of authority, that "during the winding-up proceedings after dissolution, no creditor will be permitted by legal process or otherwise to acquire priority, or to enforce his claim against the property held for distribution as against the rights of other creditors." (8 Thompson on Corporations, sec. 6567 (6611); Engineering Co. v. Perryman Elec. Co., N. J. Eq., 166 Atl. 461.) Rohr v. Stanton Trust & Savings Bank, 76 Mont. 248, 245 Pac. 947, while relating to the liquidation of a bank pursuant to statute, recognizes the principle above set forth.

[fol. 113] Furthermore, as I understand the opinion of the Supreme Court of the United States, there being no local policy expressed in statute or decision whereby judgments and attachments, secured after the title to the property of the corporation has passed to a charter liquidator, have preference over his title, we should affirm the orders and judgment of the district court of Cascade county, from which the appeals in this case originated.

Lew L. Callaway, Chief Justice.

Mr. Justice Angstman, dissenting:

I find myself unable to concur in the opinion written by Mr. Justice Anderson. The single question left for this court to pass upon under the mandate of the United States Supreme Court, is "whether there is any local policy whereby an insolvent foreign corporation in the hands of a liquidator with title must submit to the sacrifice of its assets or to their unequal distribution by writs of execution." The United States Supreme Court in considering this question said that it "is involved in confusion with decisions pro and con." But it also said: "The tendency in most of the states is to give priority to the title unless a contrary policy is expressed with reasonable clarity." It cited in support of the rule, Martyne v. American Union Fire Ins. Co., 216 N. Y. 183, 110 N. E. 502; Kinsler v. Casualty Co., 103 Neb. 382, 172 N. W. 22; Bockover v. Life Association of America, 77 Va. 85, and Cogliano v. Ferguson, 245 Mass. 364, 139 N. E. 527. To those may also be added the case of Engineering Co. v. Perryman Elec. Co., N. J. Eq., 166 Atl. 461, where the court said: "It is a well-established rule of law that all creditors of a corporation, wherever residing, are entitled, in case of its insolvency, to have its general assets distributed among them upon principles of perfect [fol. 114] equality, and that the courts of one state have no right to favor domestic creditors; therefore, this court cannot apply the assets in possession of its receivers to the payment of claims of creditors who are residents of this state in disregard of the rights of creditors who are residents of other states. Distribution must be made upon the principle that equality is equity." Such is the rule stated by Thompson in his work on Corporations, Vol. 8, section 6566, third ed. That author also said: "During the winding-up proceedings after dissolution, no creditor will be

permitted by legal process or otherwise, to acquire priority, or to enforce his claim against the property held for distribution as against the rights of other creditors." (8 Thompson on Corporations, p. 758.)

Sections 6011 and 9303, Revised Codes 1921, and the cases cited and quoted from in the majority opinion interpreting these sections, have no application here. They do not deal with insolvent corporations. The cases of Gilna v. Barker, 78 Mont. 357, 254 Pac. 174, and Gilna v. Barker, 78 Mont. 343, 254 Pac. 169, were cases where the statutory trustees of a corporation whose charter life had expired, were sued on contracts made by them after they became such trustees. The case of Frost v. Heslet, 19 Mont. 188, 47 Pac. 805, simply holds that a corporation, while a going concern, may, when insolvent, prefer one creditor over another. It does not aid us in the question here under consideration. The rule is otherwise where, as here, the corporation is both insolvent and has suspended business. (8 Thompson on Corporations, secs. 6188 and 6198.) We so held in Cabot Inc. v. Gas Products Co., 93 Mont. 497, 19 Pac. (2d) 878. That a creditor of either a foreign or domestic insolvent corporation, dissolved by order of court, may thereafter obtain a preference over other creditors by execution on the funds of the corporation held in trust by the liquidator for the benefit of creditors seems to me preposterous.

In those cases holding that the title of the statutory re-
[fol. 115] ceiver on dissolution of a foreign insolvent corporation is subject to execution, it is only so held in favor of creditors residing in the state where the execution is sought. This is the rule in Iowa. (Schloss v. Metropolitan Surety Co., 149 Iowa, 382, 128 N. W. 384; Watts v. Southern Surety Co., (Ia.), 248 N. W. 347.) Emphasis is placed upon the Iowa decisions by my associates in the foregoing opinion. Iowa does not recognize the right of a foreign liquidator even by way of comity, when to do so would relegate local creditors to a foreign jurisdiction to obtain the relief to which they are entitled.

We are here dealing with the rights of local creditors by virtue of an execution. But to avoid the force and effect of the case of Blake v. McClung, 172 U. S. 239, 43 L. Ed. 432, 20 Sup. Ct. 307, which prohibits a state from favoring resident creditors over nonresident ones, the majority of my associates are announcing the startling policy, unheard of

elsewhere, that any creditor, whether resident or foreign, may obtain such a preference. This policy, I venture to say, this court will hasten to reverse when a foreign creditor seeks its benefit to the prejudice of local creditors.

Under the sweeping policy announced in the opinion by Mr. Justice Anderson, a vigilant foreign creditor will be permitted to levy execution upon property in this state of a dissolved, insolvent foreign corporation and obtain a preference over Montana creditors, as against property situated in Montana. From this position this court will certainly retreat when a case is presented where a foreign creditor seeks by execution to obtain a preference over domestic creditors. Moreover, this is not a case where we can properly announce a policy on grounds of reciprocity. The majority think that, since Iowa would not recognize a Montana liquidator, we should not recognize an Iowa liquidator. It should be borne in mind that no Iowa creditors are here involved. The policy announced by this [fol. 116] court may not affect Iowa creditors at all. It may affect Idaho creditors, and creditors from other states wherein a different rule prevails from that established in Iowa. However desirable it might be to prefer resident creditors over nonresident ones, this may not be done without violating the federal Constitution. (Blake v. McClung, supra.)

On one other ground I think the conclusion announced by the majority is erroneous. I think this court erred in the interpretation of our statutes on the former hearing in this case (94 Mont. 508, 23 Pac. (2d) 959), wherein it is held that the corporate life of the dissolved corporation was continued by our statutes for the purpose of obtaining judgment and execution. My reasons for so thinking are set forth in my dissenting opinion in that case. The Supreme Court of the United States could not, of course, consider that question. It was bound by the interpretation placed upon our statutes by this court. That is elementary law. That court only considers federal questions. At the very outset of the opinion of the United States Supreme Court, when reaching the merits of the case, it said: "We assume in accordance with the decision of the Montana court, that the respondents' action against the surety company did not abate on dissolution, but was lawfully pursued to judgment." There was nothing else for that court to do, for

under its repeated decisions it is bound by the interpretation placed by a state court upon its own statutes.

For the reasons stated in my dissenting opinion on the former appeal, I think the judgment and execution were ineffectual, and that the claim here involved stands only upon an equality with the claims of other creditors wherever residing. I also think this should be the policy to be announced by this court if it be assumed that the judgment against the dissolved corporation be valid. I think the judgment entered by the trial court gave the creditors here complaining all the protection to which they were and are entitled and that it should be affirmed.

Albert H. Angstman, Associate Justice.

[fol. 117] MINUTES OF THE SUPREME COURT, THIRTY-FIRST DAY OF JUNE TERM, 1934

Tuesday, July 24, 1934.

Court convened pursuant to recess.

Present: The Hon. Lew. L. Callaway, Chief Justice; The Hon. Albert H. Angstman, Associate Justice; The Hon. John A. Matthews, Associate Justice; The Hon. S. V. Stewart, Associate Justice, The Hon. Ralph J. Anderson, Associate Justice; J. W. Crosby, Clerk; Floyd O. Small, Marshal.

And the following proceedings were had:

7074

JOHN MIEYR, Respondent,

v.

FEDERAL SURETY COMPANY OF DAVENPORT, IOWA, et al., Respondents; D. A. Crichton, Ancillary Receiver, Respondent; Harry O. Williard, et al., Appellants

This cause this day came on for judgment and decision. Whereupon, on consideration it is now here ordered and adjudged by this Court that the cause be, and it is hereby remanded to the district court of Cascade county with direction to modify the order of August 25, 1932, to the end that the lien of the appellants acquired by virtue of the levy

of the execution is determined to be valid as against and prior to the claim of the respondent Clark, and of the receiver appointed by the district court; that the claim of the respondent Clark, and of the receiver so appointed, is superior to the claim of all persons attempting to assert a lien on the assets of the Federal Surety Company which was not perfected prior to August 3, 1932. The order of August 25, 1932, will when so modified, stand affirmed. The appellants will recover their costs in this Court. Opinion by Mr. Justice Anderson, concurred in by Mr. Justice Matthews and Mr. Justice Stewart. Mr. Chief Justice Callaway and Mr. Justice Angstman, dissenting.

There being no further matter presented the Court went into recess.

Lew. L. Callaway, Chief Justice.

Attest: J. W. Crosby, Clerk.

[fol. 118] In the Supreme Court of the State of Montana

John Mieyr, Respondent,

vs.

Federal Surety Company of Davenport, Iowa, a Corporation, and E. W. Clark, as Receiver of Federal Surety Company of Davenport, Iowa, Respondents; Harry O. Williard, W. W. Wheaton and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, a Common Law Trust, and Gordon Campbell-Kevin Syndicate, a Common Law Trust, Appellants

Request for Stay of Remittitur

To the Honorable, the above-entitled Court and the Justices thereof;

You are hereby advised that it is the intention of E. W. Clark, as Receiver, one of the parties to the above-entitled cause, to make application to the Supreme Court of the United States for a writ of certiorari for the purpose of bringing before said court for review the judgment of the above-entitled court in the above-entitled cause, rendered

on the 24th day of July, 1934, upon the grounds and for the reasons, among others, that the decision and said judgment does not give full faith and credit to the order and judgment of the Iowa court appointing E. W. Clark receiver, and fails to conform to the mandate of the Supreme Court of the United States.

Dated this 30th day of July, 1934.

Filed July 30, 1934. J. W. Crosby, Clerk of the Supreme Court, State of Montana, by O. T. Crane, Act. Clk.

Gunn, Rasch, Hall & Gunn, Attorneys for E. W. Clark, Receiver, by M. S. Gunn.

[fol. 119] IN THE SUPREME COURT OF THE STATE OF MONTANA

JOHN MIEYR, Respondent,

vs.

FEDERAL SURETY COMPANY OF DAVENPORT, IOWA, a Corporation, and E. W. Clark, as Receiver of Federal Surety Company of Davenport, Iowa, Respondents; Harry O. Williard, W. W. Wheaton and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, a Common Law Trust, and Gordon Campbell-Kevin Syndicate, a Common Law Trust, Appellants

ORDER STAYING REMITTITUR OR MANDATE

It appearing that E. W. Clark, as Receiver, one of the respondents above named, intends to make application to the Supreme Court of the United States for a writ of certiorari for the purpose of bringing before said Court for review the judgment of the above-entitled court in the above-entitled cause, rendered on the 24th day of July, 1934, and that there is reasonable ground for said application, upon motion of Gunn, Rasch, Hall & Gunn, attorneys for said E. W. Clark, as Receiver, it is ordered that the remittitur or mandate in said cause shall not issue, but shall be stayed until the 15th day of September, 1934, and that if on or before said date there is filed with the Clerk of this Court an affidavit of one of the attorneys for said E. W. Clark, as Re-

ceiver, showing that such application by proper petition for writ of certiorari has been made in compliance with the rules of the Supreme Court of the United States, that the said remittitur or mandate shall be stayed for a further period thereafter, and shall not issue before final disposition shall be made by the Supreme Court of the United States of said application or petition.

[fols. 120-123] The stay hereby granted is upon the condition that there be filed with the Clerk of this Court within five (5) days from the date hereof a good and sufficient bond in the penal sum of $500.00, approved by one of the Justices of this Court, conditioned that if said application for such writ is not made on or before the 15th day of September, 1934, or if such application is not granted, or the said E. W. Clark, as Receiver, fails to make his plea good in the said Supreme Court of the United States, he will answer for all damages and costs which the appellants above named may sustain by reason of said stay.

Dated this 30th day of July, 1934.

Filed July 30, 1934. J. W. Crosby, Clerk of the Supreme Court, State of Montana, by O. T. Crane, Act. Clk.

Llewellyn L. Callaway, Chief Justice of the Supreme Court of the State of Montana.

[fol. 1]

IN SUPREME COURT OF MONTANA

JOHN MIEYR, Respondent,

vs.

FEDERAL SURETY COMPANY OF DAVENPORT, IOWA, a Corporation, and E. W. Clark, as Receiver of Federal Surety Company of Davenport, Iowa, Respondents; Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, a Common-law Trust, and Gordon Campbell-Kevin Syndicate, a Common-law Trust, Appellants

[Caption omitted]

IN DISTRICT COURT OF EIGHTH JUDICIAL DISTRICT OF MONTANA IN AND FOR CASCADE COUNTY

[Title omitted]

Bill of Exceptions Prepared on Behalf of Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, a Common-law Trust, and on behalf of said Last-named Syndicate

Be it remembered that on the 25th day of August, 1932, an Order, Judgment or Decree, hereinafter set forth, and entitled "Order Confirming Appointment of Receiver", wherein and whereby the alleged rights of the said Harry O. Williard, W. W. Wheaton and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, creditors of Defendant Federal Surety Company, herein, said alleged rights were claimed to be affected, was made and entered herein out of the presence of said Harry O. Williard, W. W. Wheaton and C. W. Hay, as such Trustees, and out of the presence of their attorneys, Louis P. Donovan and Belden & DeKalb, but after a hearing and argument of counsel were had and briefs were submitted; that theretofore, on the 24th day of May, 1932, the said above named creditors presented their Petition and secured from the Court an order allowing the levy of executions, under judgments theretofore obtained by them, upon moneys belonging to Federal [fol. 2] Surety Company, which said Order, the Receiver appointed herein, D. A. Crichton, moved this Honorable Court on July 25th, 1932, to vacate, all as hereinafter set forth, and acted upon, as hereinafter set forth; and the Motion of said above named creditors filed herein on August 31st, 1932, attacking the said Order Confirming Appointment of Receiver, made and entered herein August 25th, 1932, which said Motion, as hereinafter set forth, was filed and came on for hearing, as hereinafter set forth, on August 31st, 1932, before H. H. Ewing, the Judge having jurisdiction of said cause, and that the said Motions and Orders were based upon the files and records and evidence, as herein set forth, and none other, all of which, in full substance, are in the words and figures as follows, to-wit:

That on the 25th day of March, 1932, Plaintiff filed his Complaint herein in the words and figures as follows, to-wit:

COMPLAINT—Filed March 25, 1932

Plaintiff complains of the defendants and alleges:

1

That on or about the 25th day of October, 1929, at Great Falls, Montana, for a valuable consideration, the plaintiff and Federal Surety Company made and entered into a certain contract of insurance in writing, a copy of which is hereto attached, marked Exhibit "A", and by this reference made a part hereof.

2

That on or about the 9th day of June, 1930, while said insurance was in full force and effect, the plaintiff suffered a loss from the liability imposed by law upon the assured for damages on account of bodily injuries accidentally suffered by one Elizabeth Mieyr, who, at the time, and at all the times herein mentioned, was not a chauffeur or an employee of the plaintiff, which loss occurred in the State of Montana, United States of America, by reason of the ownership, maintenance, use and operation of an automobile specifically described in said contract, to-wit: a certain Chandler Sedan, Factory or Serial No. C 30857, Motor [fol. 3] No. C 30857, 1928 Model, while the Plaintiff was using the same for pleasure.

3

That immediately upon suffering said loss, plaintiff notified the authorized agent of the said insurance company of said loss and thereafter there was instituted in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, a certain action upon said loss or liability in which the said Elizabeth Mieyr was plaintiff and the Plaintiff herein, John Mieyr, was defendant; that immediately upon the papers in said cause being served upon the plaintiff he notified and turned over said papers to the authorized agent of the Federal Surety Company, and the Federal Surety Company, by and through its Attorney, O. B. Kotz,

entered an appearance in said suit by Demurrer, and the said Federal Surety Company undertook to defend the plaintiff herein in said suit, and that thereafter such proceedings were had that on the 22nd day of March, 1932, there was duly given and made in said Court, a Judgment against the Plaintiff herein, in the sum of Two Thousand, Seven Hundred Forty-two and 70/100 Dollars ($2,742.70), upon said liability imposed by law for damages on account of the bodily injury sustained by the said Elizabeth Mieyr.

4

That thereupon, and thereby, the said Federal Surety Company became indebted to the plaintiff in the sum of Two Thousand, Seven Hundred Forty-two and 70/100 Dollars ($2,742.70) no part of which has been paid, and the whole thereof is now due and owing from the said Federal Surety Company to the plaintiff.

5

That at all times herein mentioned prior to September 25th, 1931, the said Federal Surety Company was a corporation duly organized and existing under and by virtue of the laws of the State of Iowa, and that on the 25th day of September, 1931, there was in full force and effect Section 8402 of the Code of Iowa of 1927 and of 1931, being Section 1640 of the Code of Iowa of 1897, which provides as follows:

[fol. 4] "Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the State of Iowa. An action therefore may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them."

and Section 8964 of the Code of Iowa of 1927 and of the Code of 1931, being Section 1731 of the Code of 1897, which provides as follows:

"The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents or stockholders of any insurance company doing business in the state, to examine into the affairs and conditions of any such company incorporated or doing business therein,

or make such examination himself, and the officers or agents thereof shall produce their books for the inspection of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they may examine under oath the officers or agents of any company, or others, relative to the business and condition of the company, and the result thereof shall be published in one or more papers in the state, when the commissioner believes the public interest requires it. When it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more than twenty per cent below the paid-up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney general, who shall apply to the district court, or if in vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a dis-[fol. 5] tribution of its effects, and appoint a receiver therefor. The application of the attorney general may be by the court or the judge sent to a referee to inquire into and report upon the facts stated therein, which report shall be made to the court or judge."

and Section 8613-c1 of the Code of Iowa of 1931, being Chapter 233 of the Acts of the 43rd General Assembly of Iowa, which provides as follows:

"The commissioner of insurance henceforth shall be the receiver and/or liquidating officer for any insurance company, association or insurance carrier, and shall serve without compensation other than his stated compensation as commissioner of insurance, but he shall be allowed clerical and other expenses necessary for the conduct of such receivership."

6

That on or about the 25th day of September, 1931, in the District Court of the State of Iowa, in and for the County of Scott, in Equity Cause #28238, entitled "State of Iowa, ex rel, John Fletcher, Attorney General, vs. Federal Surety Company, of Davenport, Iowa," judgment was duly given and made in said cause, dissolving said corporation and appointing one E. W. Clark Receiver and/or Liquidating Officer of said corporation, to take title to all property of the dissolved corporation for the purpose of liquidating its affairs and distributing its assets as by law provided.

7

That the said Federal Surety Company is indebted to citizens of Montana, residing within the State of Montana in a sum in excess of Fifty Thousand Dollars ($50,000.00).

8

That the said Federal Surety Company has property within the State of Montana consisting of cash money in the hands of the Industrial Accident Commission for the State of Montana, in the sum of Twenty-five Thousand Dollars ($25,000.00); that the said Federal Surety Company has a judgment duly given and made by the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark against the [fol. 6] Fidelity and Deposit Company of Maryland, of the value of more than Fifteen Thousand Dollars ($15,000.00); that the said Federal Surety Company has in *d*ustodia legis within the State of Montana the sum of Ten Thousand Dollars ($10,000.00) and has the further sum of Three Thousand Five Hundred Dollars ($3,500.00) cash in hands of trustees in the State of Montana, and that the said R. W. Clark, through his agents and representatives, is now in the State of Montana attempting to compromise, settle and discount said assets and procure possession of such portions thereof as he can and remove the same out of the State of Montana, and that unless a Receiver is appointed within the State of Montana to take charge of said property, and preserve the same for the creditors of this State, and the general creditors of the said Federal

Surety Company, the same will be dissipated and lost to said creditors; that none of said sums can be levied upon by process issued from any Court of this State by attachment, execution or otherwise; that said Federal Surety Company is wholly insolvent and has been dissolved by a Court of competent jurisdiction by Order duly given and made in a proceedings properly instituted before said Court.

9

That unless a Receiver is appointed of the assets of said Corporation within the State of Montana, the plaintiff and the creditors of the State of Montana will be compelled to go into a foreign jurisdiction to collect their debts or their proper proportion of the assets of said corporation, and to litigate the propriety of their debts or claims; that said funds should be maintained and retained within the State of Montana until the proportionate shares of the creditors of the State of Montana have been ascertained and determined and these decreed and paid out of the local assets before transferring any of the funds to the domiciliary administration or receiver.

10

That by the decree of the Court of Iowa above mentioned, said Federal Surety Company of Davenport, Iowa, has ceased to exist as a corporate entity, and its successor, the said E. W. Clark, Receiver of said Federal Surety Company of Davenport, Iowa, is beyond the jurisdiction [fol. 7] of this Court and that unless a Receiver is appointed pendente lite and without notice, all the assets of said Federal Surety Company of Davenport, Iowa, will be removed beyond the jurisdiction of the Courts of the State of Montana and beyond the jurisdiction of this court before service of process can be had upon the defendants, or notice of application for appointment of a Receiver be served and a hearing thereon had.

11

That D. A. Crichton of Great Falls, Montana, is a fit and proper person to act as Receiver herein and that he is not a party hereto or interested herein, or an attorney for any

party or person interested herein, and is familiar with the assets of the defendant Federal Surety Company of Davenport, Iowa.

Wherefore Plaintiff prays judgment and decree of this Court.

First. Judgment against the defendants for the sum of Two Thousand Seven Hundred Forty-two and 70/100 Dollars ($2,742.70), together with interest thereon at the rate of eight per sent per annum from and after the 22nd day of March, 1932.

Second. That the plaintiff be decreed to have a valid claim against the Federal Surety Company of Davenport, Iowa, in the sum of Two Thousand, Seven Hundred Forty-two and 70/100 Dollars ($2,742.70), with interest thereon at the rate of eight per cent per annum from and after the 22nd day of March, 1932.

Third. That a Receiver be appointed to take possession of, conserve and preserve all of the assets of the Federal Surety Company of Davenport, Iowa, within the State of Montana, and to hold the same until the further order of this Court, and that he be given the usual powers of Receivers appointed by this Court.

Fourth. That D. A. Crichton be appointed such Receiver.

Fifth. That in the event that it is determined that the assets of the Federal Surety Company of Davenport, Iowa, are insufficient to pay all of its creditors in full, that your plaintiff be paid his proportionate share of such assets.

[fol. 8] Sixth. For his costs and disbursements herein extended and for such other and further relief as to the Court may seem just.

Molumby, Busha & Greenan, Attorneys for Plaintiff.

(Duly verified.)

Exhibit "A" to Complaint

The Exhibit "A" annexed to the Complaint was in full substance an automobile liability policy issued by the Federal Surety Company, dated October 25th, 1929, providing for compensation in certain events to the insured, John

Mieyr, of Great Falls, and sustaining the allegations of Plaintiff's Complaint, where reference thereto is made to said exhibit.

That summons duly issued in said cause and service of said Summons was duly made by the Sheriff of Lewis and Clark county, Montana, upon George P. Porter, State Auditor and Commissioner of Insurance of the State of Montana on the 31st day of May, 1932, and return thereof duly made to said Court; that upon the said Complaint being filed, and based exclusively thereon, on the 25th day of March, 1932, the Court made an order appointing D. A. Crichton, of Great Falls, Montana, in the words and figures as follows, to-wit:

ORDER APPOINTING RECEIVER—Filed March 26, 1932

On motion of Molumby, Busha & Greenan, counsel for the Plaintiff, and upon the Summons and positively verified Complaint herein and it appearing to the Court therefrom that there is immediate danger that the property mentioned in said Complaint and all of the property of the Federal Surety Company of Davenport, Iowa, within the State of Montana, will be removed beyond the jurisdiction of this Court, and that the delay resulting from giving Notice of Motion for the appointment of the Receiver in this case would defeat the very right which plaintiff seeks to protect, and imperil the property involved in this action.

It is ordered that Noticce of said Motion be dispensed with upon furnishing an undertaking in the sum of Two [fol. 9] Thousand Dollars, and that D. A. Crichton of the City of Great Falls, County of Cascade, State of Montana, be and he is hereby appointed Receiver of all of the property of the Federal Surety Company within the State of Montana, upon his being sworn to perform his duties faithfully and executing, acknowledging and filing with the Clerk of this Court a bond with sufficient sureties to be approved by the Judge of this Court, *a bond with sufficient sureties to be approved by the judge of this court* in the usual form in the sum of Sixty Thousand Dollars to the effect that he, the said Receiver, will faithfully discharge

the duties of the Receiver in the action, and obey the Orders of the Court herein.

It is further ordered that the Receiver be vested with all the powers and rights of Receivers appointed by this Court, and with the power to take possession of all property heretofore belonging to the said Federal Surety Company of Davenport, Iowa, and to collect all sums owing to the said Federal Surety Company of Davenport, Iowa, and to keep and preserve the same and manage and disburse the same, according to the further order of this Court.

Done in Open Court this 25th day of March, 1932.

H. H. Ewing, Judge.

That thereafter the said D. A. Crichton took and subscribed an oath, as Receiver, in the words and figures as follows, to-wit:

OATH OF RECEIVER—Filed March 26, 1932

STATE OF MONTANA,
County of Cascade, ss:

I, D. A. Crichton, do solemnly swear that I will faithfully perform, according to law, the duties of Receiver in the above entitled matter.

D. A. Crichton.

Subscribed and sworn to before me this 26th day of March, 1932. My commission expires December 3, 1934. C. T. Busha, Jr., Notary Public for the State of Mont., Residing at Great Falls, Montana. (Notarial seal.)

[fol. 10] That concurrently therewith the said D. A. Crichton made and executed a good and sufficient bond in accordance with said Order appointing him.

On the 31st day of March, 1932, the Defendant E. W. Clark appeared in said action by a Notice of Motion in the words and figures as follows, to-wit:

NOTICE OF MOTION TO DISCHARGE RECEIVERS—Filed Apr. 5, 1932

To John Mieyr, plaintiff above named, and his attorneys, Molumby, Busha & Greenan:

Please take notice that the defendant, E. W. Clark, Receiver and Liquidating Officer of the Federal Surety Company of Davenport, Iowa, appearing specially for the purpose of the Motion, notice of which is hereby given, and for no other purpose, will by the undersigned his attorneys, on the 5th day of April, 1932, at the hour of 10:00 o'clock A. M., or as soon thereafter as a hearing can be had, move the above entitled court in the department in which said action is pending to discharge the Receiver appointed in said action and vacate and set aside the order of appointment upon the ground and for the reason that said Court was without jurisdiction to make such appointment. Said Motion will be based upon the complaint in said action.

Dated this 31st day of March, 1932.

Gunn, Rasch, Hall & Gunn, Attorneys for E. W. Clark, Receiver and Liquidating Officer of the Federal Surety Company of Davenport, Iowa, appearing specially for the purpose of this motion, notice of which is hereby given, and for no other purpose.

That the said Notice of Motion was served upon the Plaintiff and his attorneys, Molumby, Busha & Greenan, and duly and regularly came on for argument thereafter, on the 5th day of April, 1932, and was by the Court taken under advisement.

Thereafter, on the 24th day of May, 1932, said Motion was denied by an Order of the Court, duly given and made in the words and figures as follows, to-wit:

[fol. 11] ORDER DENYING MOTION—Filed May 24, 1932

Defendants' Motion to discharge the Receiver in the above entitled action, and vacate and set aside the Order of his appointment, coming on regularly to be heard, and having been submitted to the Court, and the Court being advised,

It is ordered that said motion be, and the same is hereby, denied.

Dated this 24th day of May, 1932.

H. H. Ewing, Judge.

That on the 24th day of May, 1932, Harry O. Willard, C. W. Hay, and W. W. Wheaton, as Trustees of the Gordon Campbell-Kevin Syndicate, presented their verified Petition and prayed for leave to levy their Executions upon property of Federal Surety Company within the State of Montana, in the words and figures as follows, to-wit:

PETITION TO LEVY EXECUTION—Filed May 24, 1932

Come now Harry O. Williard, C. W. Hay, and W. W. Wheaton, as Trustees of the Gordon Campbell Kevin Syndicate, a common law trust, and respectfully show the Court:

That on the 20th day of May, 1932, in the District Court of the Tenth Judicial District of the State of Montana, in and for the County of Fergus, in a case then pending in said Court entitled: Harry O. Williard, C. W. Hay, and W. W. Wheaton, as Trustees of the Gordon Campbell Kevin Syndicate, a common law trust, plaintiffs, vs. Federal Surety Company, a corporation, defendant, said Court duly gave and made its Judgment in said action that said plaintiffs, Harry O. Williard, C. W. Hay, and W. W. Wheaton, as Trustees of the Gordon Campbell Kevin Syndicate, a common law trust, have and recover from said defendant, Federal Surety Company, a corporation, the sum of Ten Thousand Dollars ($10,000.00), together with interest thereon at the rate of eight per cent per annum from the 2nd day of March, 1926, making a total judgment for principal and interest of Fourteen Thousand Nine Hundred Sixty-eight and 90/100 Dollars ($14,968.90), and [fol. 12] for said plaintiffs' costs and disbursements in said action taxed in the sum of Ten and 50/100 Dollars ($10.50).

That on or about the 24th day of March, 1932, petitioners duly served and filed in the office of the Clerk of the District Court of the Tenth Judicial District of the State of Montana, in and for the County of Fergus, Petitioners' Costs on appeal in said action entitled Harry O. Williard, C. W. Hay and W. W. Wheaton, as Trustees of the Gor-

don Campbell Kevin Syndicate, a common law trust, plaintiffs, vs. Federal Surety Company, a corporation, defendant, amounting to the total sum of One Hundred forty-eight and 40/100 Dollars ($148.40), to which costs bill on appeal said defendant, Federal Surety Company, a corporation, made no objection and the same became final and in effect a judgment against the Federal Surety Company.

That Petitioners have heretofore discovered assets within the State of Montana belonging to the defendant Federal Surety Company, and Petitioners have issued executions out of the said District Court of the Tenth Judicial District of the State of Montana, in and for the County of Fergus, upon its judgments above mentioned, and petitioners desire to levy said executions upon the property of said defendant, Federal Surety Company, and subject such property to the payment of said judgments.

Wherefore petitioners respectfully pray for an Order of this Court permitting Petitioners to levy their executions upon any property within the State of Montana belonging to the defendant Federal Surety Company, a corporation, notwithstanding the Order of the Court heretofore made in this action on or about the 26th day of March, 1932, appointing a Receiver in this action.

Louis P. Donovan, Belden & DeKalb, Attorneys for Petitioners.

(Duly verified.)

That thereupon, on the 24th day of May, 1932, the Court made and entered herein an Order on said verified Petition, after due and regular service of said Petition upon the attorneys for the Plaintiff, in said cause, and attorneys for the Receiver therein, who were present at said hearing, [fol. 13] upon representations of petitioners that they had levied execution without the knowledge of the Receivership, and wished an order of the Court to purge them of contempt if any was committed, upon the further representation that in the event of an appeal from the order of May 24, 1932, refusing to vacate the order appointing a receiver, and in the event such order was reversed on appeal, they would have a lien by execution as against any claim to such assets by E. W. Clark, Receiver and Liquidating Officer of the Federal Surety Company of the State

of Iowa, and could thus litigate their claim in this state, and with the understanding announced by the Court that no preference over other Montana creditors was given them.

No evidence was submitted other than as contained in the petition for Leave to Levy filed by Petitioners, but it was stated to the Court that the judgment obtained by the Petitioners against Federal Surety Company on the 20th day of May, 1932, was made without knowledge of the receivership proceedings in Iowa; that so far as the local Receiver was concerned, D. A. Crichton, they felt that no jurisdiction had been obtained whereby he could make any claim to the money sought to be levied upon and moreover that he had not, as yet, done so; that the action in making levy was valid and unimpeachable but that in order to save any argument, concerning the matter, it was desired to have the leave of Court requested.

It was further suggested that the said Petitioners claimed and desired to have a lien in any event prior to the assertion of any claim by E. W. Clark, and that, in the event the Order of the Court of May 24th, 1932, refusing to vacate the Order appointing Receiver should be reversed, such would be the result; that so far as local creditors were concerned, Petitioners recognized their right under the decisions to participate in the Montana assets of Federal Surety Company, but subject to any priority gained in the manner recognized by law. It was agreed by counsel for plaintiff and D. A. Crichton, and counsel for said petitioners that there were ample assets in Montana to pay all Montana creditors in full. At said time counsel for plaintiff stated that he did not consent to the order requested because he did not wish to prejudice D. A. Crichton's rights as Receiver.

Said Order was in the words and figures as follows, to-wit:

[fol. 14] ORDER GRANTING PETITION TO LEVY EXECUTION—
Filed May 24, 1932

The duly verified petition for Harry O. Williard, C. W. Hay and W. W. Wheaton, as Trustee of the Gordon Campbell Kevin Syndicate, a common law trust, being presented to the Court, and Counsel being heard on said petition, and it appearing to the Court that the relief prayed for in said petition should be granted,

Now, therefore, it is ordered that the said petitioners, Harry O. Williard, C. W. Hay and W. W. Wheaton, as Trus-

tees of the Gordon Campbell Kevin Syndicate, a common law trust, be and they are hereby granted permission to levy executions issued upon judgments heretofore obtained by said petitioners against the Federal Surety Company, as set forth in their petition herein; and said executions may be levied upon any property of the defendant Federal Surety Company within the State of Montana notwithstanding the Order of this Court made in the above entitled action on or about the 26th day of March, 1932, appointing a Receiver herein.

Done in Open Court this 24th day of May, 1932.

H. H. Ewing, Judge.

That thereafter, on the 25th day of July, 1932, the said Receiver, D. A. Crichton, filed in said cause his Petition for annulment of the said Order, last above set forth, in the words and figures as follows, to-wit:

NOTICE OF MOTION FOR ANNULMENT OF ORDER—Filed July 25, 1932

To Harry O. Williard, C. W. Hay, and W. W. Wheaton, as trustees of the Gordon Campbell-Kevin Syndicate, a common-law trust, and to Louis P. Donovan and Belden & DeKalb, attorneys:

You and Each of you will please take notice that D. A. Crichton, receiver of the Federal Surety Company of Davenport, Iowa, a corporation, will call on for hearing the petition filed by him for the setting aside the order permitting the levy of executions heretofore made by the above entitled Court on the 24th day of May, 1932; said hearing [fol. 15] to be held in the Court room of the Court House in the City of Great Falls, Cascade County, State of Montana, on the 3rd day of August, 1932.

Molumby, Busha & Greenan, Attorneys for D. A. Crichton, Receiver of the Federal Surety Company of Davenport, Iowa, a Corporation.

That concurrently therewith, the said D. A. Crichton gave notice on said July 25th, 1932, that the same would be brought on for hearing on the 3rd day of August, 1932, all of which were duly served on the attorneys for the said

Harry O. Williard, C. W. Hay and W. W. Wheaton, as Trustees of the Gordon Campbell Kevin Syndicate, and that thereafter, the said Petition came on regularly for hearing on the 3rd day of August, 1932, and the following proceedings were had, to-wit:

Said Petitioners, Harry O. Williard, W. W. Wheaton and C. W. Hay, appeared by and through their attorneys, Belden & DeKalb, and the Plaintiff by and through his attorneys, Molumby, Busha & Greenan, and E. W. Clark, Defendant, by and through his attorneys, Gunn, Rasch, Hall & Gunn, whereupon counsel for said Williard, Wheaton and Hay resisted the said Motion, last above set forth, and called to the attention of the Court that there was no ground of Motion stated, and asked to be enlightened as to the ground of Motion, whereupon, it was stated that the ground of Motion was that the Order of May 24th, above set forth, granting the right to said Williard, Wheaton and Hay to levy executions, was void and the said Motion was argued to the Court and submitted for decision;

That on the 3rd day of August, 1932, the Defendant, E. W. Clark, duly served and filed herein his Answer and Cross-Petition in the words and figures as follows, to-wit:

ANSWER AND CROSS-PETITION OF E. W. CLARK, AS RECEIVER AND/OR LIQUIDATING OFFICER OF FEDERAL SURETY COMPANY OF DAVENPORT, IOWA—Filed Aug. 3, 1932

Comes now the defendant, E. W. Clark, as Receiver and/or Liquidating Officer of the Federal Surety Company of Davenport, Iowa, and for his answer to the Complaint on file in the above entitled cause:

[fol. 16]

I

Admits the allegations of paragraphs one and two of said complaint.

II

Admits the allegations of paragraphs three and four of said complaint, except the allegation that the judgment therein referred to was duly given and made and in this connection alleges that prior to the giving and entry of said judgment, to-wit; on September 25th, 1931, the Federal Surety Company of Davenport, Iowa, was dissolved, as alleged in paragraph six of said complaint.

III

Admits the allegations of paragraphs five, six and seven of said complaint.

IV

Admits the allegations of paragraphs eight, except that the sum in the hands of the Industrial Accident Commission of Montana is about $19,200.00, and that the money in the custody of the law in the State of Montana is about $8,500.00; also excepting the allegation that the assets in the State of Montana would be dissipated and lost to the creditors if turned over to this defendant as Receiver.

V

Admits the allegations of paragraphs nine, ten and eleven of said complaint.

For a further answer and by way of Cross-petition, E. W. Clark, as receiver of said Federal Surety Company, respectfully shows to this Court and alleges:

That he is the duly appointed, qualified and acting Commissioner of the Insurance Department of the State of Iowa. That, as more fully hereinafter appears, he is the duly appointed, qualified and acting Receiver of the Defendant, Federal Surety Company, of Davenport, Iowa, pursuant to order of the District Court of the State of Iowa, in and for Scott County.

That Federal Surety Company, of Davenport, Iowa, was a corporation organized and existing under and by virtue [fol. 17] of Chapter 404 of the Code of Iowa, 1927, with its principal place of business in the City of Davenport, County of Scott, State of Iowa.

That on the 11th day of September, 1931, the State of Iowa, acting through its Attorney General, John Fletcher, filed in the District Court of the State of Iowa, a court of general jurisdiction, a petition alleging that the assets and funds of the Defendant Company, Federal Surety Company, are reduced and impaired, and that in the interest of the public a temporary receiver should be appointed for said Company. That on said date, to-wit, the 11th day of September, 1931, an order was entered by said Court appointing E. W. Clark, Commissioner of the Insurance Department of the State of Iowa, as temporary receiver of said Federal Surety Company.

That on the 21st day of September, 1931, the State of Iowa, acting through its Attorney General, John Fletcher, filed in said Court an amendment to said petition, alleging that the assets and funds of the Defendant Company, Federal Surety Company, of Davenport, Iowa, are reduced and impaired by its liabilities, so that most of its capital has been and is dissipated, and that the Commissioner of Insurance of the State of Iowa has advised the Attorney General that the condition of the affairs of the Defendant Company are such that it has no cash on hand with which to pay its losses and claims in the ordinary course of business, and that the further continuance of the business of the Company would not be for the best interest of the public, and alleging further that an order should be entered requiring the Defendant Company to show cause why its business should not be forthwith dissolved and a Receiver appointed to wind up its affairs.

On the same day, to-wit, the 21st day of September, 1931, the said Court entered an order directing Federal Surety Company to show cause on the 25th day of September, 1931, why its business should not be forthwith dissolved and a Receiver appointed to wind up its affairs.

Thereafter, and on the 25th day of September, 1931, and at the time specified for such showing, and after notice to said Federal Surety Company of said order, an order was entered by said Court finding said Federal Surety Company, of Davenport, Iowa, in default for want of appear-
[fol. 18] ance pursuant to said order, finding that the assets of said Defendant are in such shape that the Company is unable to meet its current losses and obligations, and that there is grave danger of loss and dissipation of said assets, and that the interest of the public requires that said Defendant, Federal Surety Company, of Davenport, Iowa, be dissolved, its effects distributed, and that a Receiver should be appointed to take charge of and wind up its affairs and further decreeing a dissolution of the Defendant Corporation, and a distribution of its effects. Said order thereupon appointed the undersigned, E. W. Clark, as Receiver for said Defendant, Federal Surety Company, of Davenport, Iowa, and granted to the said Receiver power and authority to do all things necessary to dissolve the business of said corporation and distribute its assets among the creditors thereof all as more fully appears in a certified copy of said decree, hereinafter referred to.

Thereafter, and on the 25th day of September, 1931, the undersigned, qualified as such Receiver by filing his oath, as required by the laws of the State of Iowa, and a bond as prescribed in said Order of appointment, and thereupon the said Court, acting through its Clerk, issued to the undersigned letters of Receivership.

That on the 22nd day of December, 1931, the said Court, in said action in the State of Iowa, made a further order and decree in said cause. That a duly exemplified copy of said decree of said court, made and entered on September 25, 1931, and of said letters of receivership issued to said E. W. Clark, and of said further order and decree of December 22, 1931, are hereto attached, and marked Exhibits "A", "B" and "C", and made a part of this petition.

That all said proceedings were taken pursuant to the laws of the State of Iowa, including Section 8964 of the Codes of Iowa, 1927, which was in effect at the time of said proceedings, and which appears in words and figures as follows:

"The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents or stockholders of any insurance company doing business in the State, to examine into the affairs and condition of any such company incorporated or doing business therein, or make such examination himself, and the officers or agents thereof shall produce their books for the inspection [fol. 19] of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they may examine under oath the officers or agents of any company, or others, relative to the business and condition of the company, and the result thereof shall be published in one or more papers in the state, when the commissioner believes the public interest requires it. When it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more than twenty per cent below the paid-up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney general, who shall apply to the district court, or if in

vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company, and a distribution of its effects, and appoint a receiver therefor. The application of the attorney general may be by the court or judge sent to a referee to inquire into and report upon the facts stated therein, which report shall be made to the court or judge."

and Chapter 233 of the Acts of the 43rd General Assembly of the State of Iowa, which was in effect at the time of said proceedings, and which appears in words and figures as follows:

"Section 1. The Commissioner of Insurance henceforth shall be the receiver and/or liquidating officer for any insurance company, association or insurance carrier, and shall serve without compensation other than his stated compensation as commissioner of insurance, but he shall be allowed clerical and other expenses necessary for the conduct of such receivership.

[fol. 20] "Section 2. All expenses of supervision and liquidation shall be fixed by the commissioner of insurance, subject to approval by the court or a judge thereof, and shall upon his order, be paid out of the funds of such company, association or insurance carrier in his hands."

That by virtue of the facts hereinbefore alleged, E. W. Clark is the duly appointed, qualified and acting Receiver and/or Liquidating Officer of the Defendant, Federal Surety Company, of Davenport, Iowa.

That creditors and policyholders of said Federal Surety Company, of Davenport, Iowa, reside in different jurisdictions, including this jurisdiction.

That the assets of said Federal Surety Company are located in different jurisdictions, including this jurisdiction.

That within this jurisdiction this Petitioner is informed and believes that there are assets of said Federal Surety Company, consisting of accounts, notes, claims, securities,

furniture, and fixtures, and other personal property, worth the sum of Fifty Thousand Dollars.

That your petitioner is informed and believes that certain creditors are threatening suits against said property, and that attachments have been issued since September 25, 1931, and are about to be issued, or may be issued, against said property, as there are considerable outstanding and past due obligations, and if such suits and attachments are issued or those now commenced are prosecuted, the creditors of this estate, as well as your petitioner, will sustain an irreparable damage and loss by reason of Court costs, and the damage incident to such interference with the property of the Defendant. That for the orderly administration of this estate, and to avoid preferential treatment of one policy-holder over another, and of one creditor over another, and that all policy-holders and creditors of the Defendant may share alike in the distribution of the assets of said Company, an ancillary receiver should be appointed by this Court.

Wherefore your petitioner prays for an order of this Court confirming the title in him to the assets and property of said Federal Surety Company, and confirming the appointment of D. A. Crichton, as an Ancillary Receiver of all of the property, assets and effects of the above-named [fol. 21] defendant, Federal Surety Company, of Davenport, Iowa, situated within this jurisdiction, to care for and preserve the same until the further order of this Court, and with all rights and powers usually granted to ancillary receivers in such cases, including the right and power to carry into force and effect the order of the original Court or jurisdiction.

Petitioner further prays for an order of this Court directing the agents, employees and all other persons, including creditors, to deliver into the possession of the ancillary receiver, so appointed, and confirmed all the property of the said defendant, Federal Surety Company, and otherwise to comply with the terms of said order; and that the defendants, its agents, servants and attorneys, and all persons, firms and corporations, be restrained and enjoined from in any way interfering with the possession of said property, other than to turn the same over to the said ancillary receiver.

Petitioner states that D. A. Crichton is a proper person to act as Ancillary Receiver by appointment in this Court,

and asks that his appointment be confirmed as Ancillary Receiver.

E. W. Clark, Receiver of Federal Surety Company, by Cook & Balluff, Gunn, Rasch, Hall & Gunn, Attorneys for E. W. Clark, Receiver for Federal Surety Company.

(Duly verified.)

EXHIBIT "A" TO ANSWER AND CROSS-PETITION

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR SCOTT COUNTY

In Equity. No. 28238

STATE OF IOWA EX REL, JOHN FLETCHER, Attorney General, Plaintiff,

vs.

FEDERAL SURETY COMPANY OF DAVENPORT, IOWA, Defendant

Decree and Order Appointing Receiver

Now, on this 25th day of September, A. D. 1931, being a day of the September 1931 Term of said Court, this mat- [fol. 22] ter comes on for final hearing, upon the appl-cation of the State of Iowa, through its Attorney General, for the appointment of a Receiver for the above named Company, Plaintiff's proofs of service of notice upon the defendant are thereupon submitted and the Court finds that on the 21st day of September, A. D. 1931, this Court entered an Order requiring the defendant to appear on the 25th day of September, A. D. 1931, at two o'clock P. M., and show cause why its affairs and business should not be dissolved and a Receiver appointed to wind up its affairs and to distribute all of its effect- as by law provided. The Court further finds that a certified copy of said order was duly and properly served upon the said defendant as provided in said order.

The Plaintiff, State of Iowa, appears now by its Attorney General, John Fletcher, and Assistant Attorney General, Carl J. Stephens, and the defendant appears not, and its default is hereby entered against it.

Trial is thereupon had to the Court, and the Court having examined the evidence submitted by plaintiff, and being fully advised in the premises, finds:

That the said Federal Surety Company is a corporation organized and existing under Chapter 404 of the Insurance Laws of the State of Iowa.

The Court further finds that the assets of the said defendant are in such shape that said Company is unable to meet its current losses and obligations, and that there is grave danger of the loss and dissipation of said assets, and that the interest of the public requires that said Defendant, Federal Surety Company, be dissolved, its effects distributed, and that a Receiver be appointed to take charge of and wind up its affairs.

Wherefore it is finally ordered, adjudged and decreed:

(1) That under and in accordance with the provisions of Section 8964 of the Code of 1927 of the State of Iowa the defendant, Federal Surety Company, shall be dissolved and its effects distributed.

(2) That E. W. Clark, Commissioner of Insurance of the State of Iowa, be and he is hereby appointed permanent Receiver of said defendant company in accordance with the provisions of Chapter 233, Acts of the Forty-third General Assembly of the State of Iowa, with authority and [fol. 23] direction to take charge of and manage the property, assets and business of the defendant, with full power to sue for, collect, receive and take into his possession the goods, chattels, rights, credits, monies, books, papers, property and assets of every description and wheresoever situated, of the defendant, and to do any and all acts and things which may be necessary, proper or advisable to preserve the property, assets, rights and privileges of the defendant, and with all the incidental powers ordinarily vested in receivers in like cases. and that the Union Savings Bank and Trust Company, of Davenport, Iowa, is hereby designated as the depository of all money and funds coming into the hands of the Receiver.

(3) That said Receiver shall, as soon as it may be practicable, file an inventory of all property of every description which shall have come into his possession as such Receiver.

(4) That said Receiver proceed to wind up the business of the defendant, and to that end all creditors, including all

lien and unsecured creditors of the defendant, and all claimants to specific properties in the hands of the Receiver, be and they hereby are ordered to file proof of their claims with the Receiver on or before the first day of April, 1932. Every proof of claim shall be itemized and sworn to and shall state with particularity the nature and the origin of the claim so asserted, the actual consideration therefor when the same has become or will become due, whether any and what securities are held, whether any and what payments have been made thereon, that the sum claimed is justly due defendant, and that the claimant has not, nor has any other person for his use, received any security or satisfaction whatever other than by him set forth.

(5) That said Receiver shall within ninety (90) days from this date give a notice to creditors of the defendant advising them with respect to filing of claims, the powers of the Receiver with respect thereto, as herein set forth, and the time within which all claims shall be filed by United States Mail, addressed to the last known address of all creditors as shown by the books of the Company, and in addition thereto the Receiver shall cause a similar notice to be published in at least one (1) newspaper of general circulation in the City of Davenport, Iowa, once each week [fol. 24] for two (2) consecutive weeks, the first publication thereof to be not later than the 31st day of October, 1931.

(6) That the said Receiver is authorized to examine the claims so filed, as heretofore provided, and to make his findings thereon, allowing or disallowing, in whole or in part, each and all of said claims, and to file in this cause, as soon as possible after the time for filing claims has expired, a written report setting forth for the confirmation of this Court the results of such findings, subject to the right of any claimants to object to any findings so made, such objection to be filed in writing in this cause at such time as the Court may hereafter prescribe.

(7) In the event that any creditor or creditors shall not so present or file their claims with the Receiver aforesaid on or before the first day of April, 1932, it is hereby ordered that they shall be debarred from participating in any dividend or distribution that may hereafter be made in these proceedings, or from any interest in and to the properties of the defendant, Federal Surety Company, administered

by the Receiver, or any proceeds derived from the sale or other disposition thereof.

(8) That the Receiver is authorized and directed that in the event it approves any priorities or liens upon any of the properties administered by him, he have such properties appraised by two (2) competent appraisers whom he shall select, who shall report to this Court not less than five (5) days preceding the date fixed for the sale of the properties of the defendant company, as hereafter set out, their findings with respect to the values of the properties subject to such priorities or liens.

(9) That the Receiver shall, in addition to the appraisement of the properties, provided for in No. 8 thereof cause all of the assets and property of the defendant, except cash money, to be appraised by two (2) competent appraisers whom the Receiver shall select, who shall report to this Court not less than five (5) days preceding the date fixed for the sale of the properties of defendant company, as hereafter set out, their findings with respect to the value of the property and assets appraised by them.

(10) That the Receiver is further authorized and directed to sell all the property and assets except money, [fol. 25] whether real, personal or mixed, tangible or intangible, of the defendant, Federal Surety Company, at Receiver's sale, free and clear of all liens and incumbrances, but subject, however, to the expenses of the receivership, allocated between the different lots or parcels in accordance with the appraised value thereof. Such sale shall be at public auction for cash to the highest bidder and shall be made as an entirety or in such lots or parcels as the Receiver may determine upon and the Court approve, and as will protect any liens or priorities, reserving to the holder of any such liens or priorities, the right to bid in any of the property so sold, and, for the purpose of making settlement or payment thereof, to use and apply his securities in order that there may be credited thereon the sum or sums apportionable and applicable thereto out of the net proceeds of such sale.

(11) That the Receiver shall give notice of such sale by publishing a notice thereof in at least two (2) newspapers of general circulation in Scott County, Iowa, once each week

for four (4) consecutive weeks, the last publication thereof being at least ten (10) days before the date fixed for such sale.

(12) That no sale by the Receiver of the properties of defendant company shall be valid until the Receiver shall make report thereof and file such report with the Clerk of this Court and present such report for approval and confirmation to some Judge of this Court.

(13) That the Receiver is hereby authorized to employ such counsel as he shall deem necessary to advise him in the performance of his official duties, and that he shall have leave to employ such agents and employees as may be necessary to enable him properly to perform his duties, including the employment of auditors for the purpose of an examination of the books and records of the defendant company and making an itemized and detailed report thereof to the Receiver.

(14) That the said E. W. Clark shall, before entering upon his duties herein, take an oath and file a bond in this Court as Receiver, which bond shall be in the sum of One Hundred Thousand ($100,000.00) Dollars, with sureties to be approved by the Clerk of this Court, conditioned that the [fol. 26] said Receiver shall well and truly perform the duties of his office; whereupon, letters of receivership shall issue to him.

(15) That the aforesaid E. W. Clark was heretofore appointed temporary Receiver of Federal Surety Company in this action. It is ordered that said E. W. Clark shall with all reasonable speed file this report as temporary Receiver with this Court, and upon approval thereof he shall stand discharged as temporary Receiver.

(16) Said Receiver or any other party in interest is hereby given leave to apply to the Court at any time for any other or further directions, orders or decrees as may be necessary or proper, and the Court retains jurisdiction of this cause for this purpose.

(Sgd.) W. R. Maines, Judge.

EXHIBIT "B" TO ANSWER AND CROSS-PETITION

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR SCOTT COUNTY

In Equity. No. 28238

STATE OF IOWA ex Rel. JOHN FLETCHER, Attorney General, Plaintiff,

vs.

FEDERAL SURETY COMPANY OF DAVENPORT, IOWA, Defendant

Order as to Suits and Contracts to Which Federal Surety Company Was or Is Alleged to be a Party

Be it remembered that on this 22nd day of December, 1931, there came on for hearing before the Court the application of the Receiver appointed by this Court in the above entitled cause for instructions and orders concerning his duty as to contracts, including insurance policies and surety bonds, to which Federal Surety Company was a party, and as to suits in which Federal Surety Company is named as defendant, some of which were pending September 25, 1931, and some of which purport to have been commenced thereafter, and some in which state officers purport [fol. 27] to hold property of Federal Surety Company pursuant to levies of writs of attachment.

The Court, having considered the same, and being fully advised in the premises, now finds, determines and adjudges:

That Federal Surety Company was incorporated and existed as a corporation under and by virtue of the laws of the State of Iowa.

That this action was commenced by the State of Iowa, acting through its Attorney General, and the Order and Decree of this Court was entered herein September 25, 1931, all pursuant to Section 8402 of the Code of Iowa of 1927 and of 1931, being Section 1640 of the Code of Iowa of 1897, which provides as follows:

"Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the State of Iowa. An action therefor may be

instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them."

and Section 8964 of the Code of Iowa of 1927 and of the Code of 1931, being Section 1731 of the Code of 1897, which provides — follows:

"The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in the state, to examine into the affairs and condition of any such company incorporated or doing business therein or make such examination himself, and the officers or agents thereof shall produce their books for the inspection of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they may examine under oath the officers or agents of any company, or others, relative to the business and condition of the company, and the result thereof shall be published in one or more papers in the state, when the commissioner believes the public interest requires it. When it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more [fol. 28] than twenty per cent below the paid-up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney general, who shall apply to the district court, or if in vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, or he shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor. The application of the attorney general may be by the court or judge sent to a referee to inquire into and report upon the facts stated therein, which report shall be made to the court or judge."

and Section 8613-c1 of the Code of Iowa of 1931, being Chapter 233 of the Acts of the 43rd General Assembly of Iowa, which provides as follows:

"The commissioner of insurance henceforth shall be the receiver and/or liquidating officer for any insurance company, association or insurance carrier, and shall serve without compensation other than his stated compensation as commissioner of insurance, but he shall be allowed clerical and other expenses necessary for the conduct of such receivership."

That this Court, as a court of equity, constituted by Sections 5 and 6 of the Constitution of the State of Iowa, which provides as follows:

"The District Court shall consist of a single Judge, who shall be elected by the qualified electors of the District in which he resides. The Judge of the District Court shall hold his office for the term of four years, and until his successor shall have been elected and qualified; and shall be ineligible to any other office, except that of Judge of the Supreme Court, during the term for which he was elected."

"The District Court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have [fol. 29] jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law."

and by Section 10761 of the Code of Iowa of 1931, which provides as follows:

"The district court shall have general, original, and exclusive jurisdiction of all actions, proceedings, and remedies, both civil and criminal, except in cases where exclusive or concurrent jurisdiction is or may hereafter be conferred upon some other court or tribunal by the constitution and laws of the state, and shall have and exercise all the powers usually possessed and exercised by courts of record."

on September 25, 1931, had and now has jurisdiction of this action and the subject matter thereof.

That pursuant to the power conferred by said sections, pursuant to the allegations set forth in the petition filed therein, as amended, and pursuant to good cause shown

herein, as in said sections provided, this Court did, on September 25, 1931, enter an Order and Decree in this cause, and thereby dissolved Federal Surety Company and terminated its corporate existence, and thereby appointed E. W. Clark, who was and is Commissioner of Insurance of the State of Iowa, as the Receiver and/or liquidating officer, to take title to all property of the dissolved corporation for the purpose of liquidating its affairs and distributing its assets, as by law provided.

That by virtue of the statutes hereinbefore referred to, as construed by the Court of last resort in the State of Iowa, and by virtue of the proceedings in this cause, the said corporation, Federal Surety Company, ceased to exist upon the entry of the Order and Decree herein at 4:30 P. M., Central Standard Time, September 25, 1931, and that thereupon all its agencies ended, its employees, including attorneys, were discharged, and it was put, without exception or notice of appeal, beyond all further corporate activity, its existence was put to an end for all purposes whatsoever, so that it can neither make nor take contracts, nor sue or be sued, and so that all debts to or from it became extinguished and all actions by or against [fol. 30] it abated, and so that as after death of a natural person, it can have no interest in the property theretofore by it controlled.

That in any action pending wherein Federal Surety Company is named as a defendant, Federal Surety Company is not now, and since September 25, 1931, has not been a party defendant, so that a judgment rendered therein is or will, upon rendition, be a nullity, not binding upon the Receiver appointed herein. That a lien on property owned September 25, 1931, by Federal Surety Company, asserted by virtue of the levy of a writ of attachment in such a cause, cannot be perfected without the entry of a final judgment in such cause against Federal Surety Company; that there can be no judgment or execution against Federal Surety Company, or property owned by it September 25, 1931; and that claimants so asserting liens are, and since September 25, 1931, have been without remedy for the enforcement thereof.

It is, therefore, ordered, adjudged, and decreed:

(1) That the defendant, Federal Surety Company, is, and since September 25, 1931, has been dissolved, and that

its corporate existence is terminated, with the results hereinbefore determined.

(2) That E. W. Clark, receiver and/or liquidating officer of Federal Surety Company, is the successor to said corporation and as such holds title to all property owned by Federal Surety Company at the time it so ceased to exist.

(3) That E. W. Clark, receiver and/or liquidating officer, be and he is hereby directed to refrain from entering a general appearance on behalf of Federal Surety Company to conduct a defense on the merits in any action wherein Federal Surety Company is named as a defendant.

(4) That E. W. Clark, receiver and/or liquidating officer, be and he is hereby given leave in his discretion to appear specially, or as may be necessary, in any action wherein Federal Surety Company is named as defendant, for the purpose of presenting a plea in abatement, motion to dismiss, or motion to quash or dissolve any summons or writ of attachment, and any levy attempted thereunder, and/or other writ, process, garnishment or seizure of property.

(5) That a person asserting a claim against Federal Surety Company shall share in the assets distributed by [fol. 31] the Receiver only to the extent that his claim is allowed by this Court, either upon recommendation to the Court or after proof, and that in passing upon and determining the validity of claims presented, judgments purporting to have been rendered against Federal Surety Company after September 25, 1931, be disregarded, and that a lien asserted by virtue of attachment or other process in any cause wherein judgment was not rendered prior to September 25, 1931, be disregarded in determining the rights of the claimant asserting the same.

(6) That all policies of insurance, contracts of reinsurance, and surety bonds in effect September 25, 1931, including the policies of insurance and surety bonds wherein Federal Surety Company appeared as principal, surety, insurer, insured, reinsurer or reinsured, were cancelled and terminated upon entry in this cause of the order of dissolution of Federal Surety Company at 4:30 P. M., Central Standard Time, September 25, 1931.

W. R. Maines, Judge.

EXHIBIT "C" TO ANSWER AND CROSS-PETITION

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR SCOTT COUNTY

Equity. No.28238

STATE OF IOWA ex Rel. JOHN FLETCHER, Attorney General, Plaintiff,

vs.

FEDERAL SURETY COMPANY OF DAVENPORT, IOWA, Defendant

Letters of Receivership Issued to E. W. Clark, of Des Moines, Iowa

STATE OF IOWA,
Scott County, ss:

To all to whom these presents shall come, Greeting:

Whereas, on the 25th day of September, A. D. 1931, the District Court of Iowa for Scott County, in a certain cause then pending and numbered 28238 and entitled State of [fol. 32] Iowa, ex rel. John Fletcher, Attorney General, Plaintiff, vs. Federal Surety Company of Davenport, Iowa, Defendant, did on application of the plaintiff in said suit enter an Order appointing E. W. Clark of Des Moines, Iowa, as Receiver; and

Whereas, said E. W. Clark of Des Moines, Iowa, has entered into bond for the faithful performance of his duty and has filed the oath prescribed by law.

Now, therefore, know ye and all whom it may concern that said E. W. Clark of Des Moines, Iowa, has been appointed Receiver in the above entitled action with full power to demand, sue for and take possession of all money and property belonging to the defendant, Federal Surety Company, and in general to do all other acts which may be required of said Receiver by law or the Order of the Court.

In testimony whereof I have hereunto set my hand and affixed the seal of the District Court of said County at Davenport, this 25th day of September, A. D. 1931.

Emil F. Schroder, Clerk of the District Court, by Olive S. Clements, Deputy. (Seal.)

Certificate of Judge and Clerk

IN THE DISTRICT COURT OF IOWA IN AND FOR SCOTT COUNTY, STATE OF IOWA

SCOTT COUNTY, ss.

I, Emil, F. Schroder, Clerk of the District Court of the State of Iowa, in and for said County, do hereby certify that the foregoing is a true, compared and perfect transcript of the following described instruments in the matter of State of Iowa, Ex Rel. John Fletcher, Attorney General, Plaintiff vs. Federal Surety Company of Davenport, Iowa, Defendant, being Equity cause No. 28238 of the causes pending in my office, all of which instruments were filed in my office on the several dates noted below, to-wit:

(1) Decree and Order dissolving Federal Surety Company of Davenport, Iowa, and appointing E. W. Clark permanent receiver, entered September 25, 1931;

(2) Letters of Receivership issued September 25, 1931, to E. W. Clark;

[fol. 33] (3) Order as to suits and contracts to which Federal Surety Company was or is alleged to be a party, entered December 22, 1931.

I further certify that on the date of this certificate the said E. W. Clark is the duly appointed, qualified and acting Receiver of Federal Surety Company.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at my office in Davenport in said County this 8 day of June, 1932.

Emil F. Schroder, Clerk of the District Court of the State of Iowa in and for Scott County. (Seal.)

STATE OF IOWA,
Scott County, ss:

I. W. R. Maines, one of the Judges of the District Court of the State of Iowa, in and for the Seventh Judicial District of said State, composed of the Counties of Scott, Clinton, Muscatine and Jackson, do hereby certify that Emil F. Schroder, who has given the preceding certificate, was, at the time of so doing, the Clerk of the District Court of the state of Iowa, in and for Scott County, in said District,

duly qualified as such, that he is the proper custodian of the records of said Court, and the proper officer to give such certificate, and that the same is in due form of law.

Witness my hand at Davenport, Iowa, this 8 day of June, A. D. 1932.

W. R. Maines, Judge District Court, Seventh Judicial District.

STATE OF IOWA,
Scott County, ss:

I, Emil F. Schroder, Clerk of the District Court of the State of Iowa, in and for said County, do hereby certify that the Honorable W. R. Maines, who has given the preceding certificate, was, at the time of so doing, one of the Judges of the District Court of the Seventh Judicial District of the State of Iowa, duly commissioned and sworn, to all whose acts as such, full faith and credit are and ought to be given.

[Vol. 34] In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Davenport, in said County, this 8th day of June, A. D. 1932.

Emil F. Schroder, Clerk District Court. (Seal.)

That on the 3rd day of August, 1932, the Plaintiff filed herein his admission of the allegations of the Answer and Cross-Petition of E. W. Clark, in the words and figures as follows, to-wit:

ADMISSION OF ALLEGATIONS IN ANSWER AND CROSS-PETITION —Filed Aug. 3, 1932

Comes now the plaintiff in the above entitled action, and through his counsel of record admits each and every affirmative allegation, fact and thing contained in the Answer and Cross Petition of E. W. Clark, as Receiver and/or Liquidating Officer of Federal Surety Company of Davenport, Iowa, and joins in the prayer of said petition, and consents to the granting of the same.

Molumby, Busha & Greenan, Attorneys for the Plaintiff.

That thereafter, on the 25th day of August, 1932, out of the presence of said Williard, Wheaton and Hay, and of their attorneys, and without their knowledge, the Court made and entered an Order Confirming the Appointment of Receiver in the words and figures as follows, to-wit:

ORDER CONFIRMING APPOINTMENT OF RECEIVER AND DECREE —Filed Aug. 25, 1932

Be it remembered that on the 2nd day of Aug., 1932, the above entitled matter came on for hearing before the Court, upon the plaintiff's Petition and the answer and Cross-Petition of E. W. Clark as Receiver and/or Liquidating Officer of Federal Surety Company, asking for confirmation of his title to certain assets and for confirmation of the appointment of D. A. Crichton as Receiver herein and a determination of the relative rights and powers of the said Clark and the said Crichton; E. W. Clark, Receiver and/or Liquidating Officer, appearing by Cook & Balluff, [fol. 35] and Gunn, Rasch, Hall & Gunn, his attorneys, and the Plaintiff and D. A. Crichton appearing in person and by their attorneys, Molumby, Busha & Greenan.

The Court, being fully advised in the premises, finds:

That Federal Surety Company was organized and existed as a corporation under and by virtue of the laws of the State of Iowa relating to insurance companies. That pursuant to the statutes of the State of Iowa an action in equity was commenced by the Attorney General of the State of Iowa as plaintiff and against Federal Surety Company as defendant. That in that action, and after notice to Federal Surety Company, an order and decree of said Court was entered on September 25, 1931, dissolving Federal Surety Company and appointing E. W. Clark, Commissioner of the Department of Insurance of the State of Iowa, as Receiver and/or liquidating Officer of the dissolved Federal Surety Company and directing him as such to liquidate the assets of said Federal Surety Company and to distribute the same among the creditors of Federal Surety Company whose claims are determined as in said order provided. That the said Clark qualified and is now the duly appointed, qualified and acting Receiver and/or liquidating officer of the dissolved corporation, Federal Surety Company.

That thereupon the corporate existence of Federal Surety Company terminated and title to all property thereto-

fore owned by it passed to the Commissioner of the Department of Insurance of the State of Iowa in his capacity as Receiver and/or liquidating officer as aforesaid.

That the assets owned by the former Federal Surety Company, wherever situated, should be liquidated and distributed ratably to all persons having claims against Federal Surety Company, subject to any liens and rights of creditors acquired on or prior to September 25, 1931, in or to specific property.

That this Court has and should assert jurisdiction of all property owned by Federal Surety Company, title to which passed to E. W. Clark, Receiver and/or liquidating officer as aforesaid, and situated in the State of Montana for the purposes, among other things of (1) determining the extent of liens or other rights acquired in or to such property prior to the dissolution of Federal Surety Company as aforesaid; (2) assuring to residents of Montana a distribution out of the assets owned by Federal Surety Company ratably with [fol. 36] all creditors of Federal Surety Company wherever situated; (3) assisting said Receiver and/or Liquidating officer with and facilitating the liquidation of assets owned by Federal Surety Company under orders of the Iowa Court. It is, therefore, determined, ordered, adjudged and decreed as follows:

(1) The appointment and qualification of D. A. Crichton as Receiver of the rights, claims and property owned by Federal Surety Company on September 25, 1931, and now owned by Clark, Receiver, as aforesaid, and situated in the State of Montana, be and it is hereby confirmed, and that as such Receiver he proceed with the liquidation of such assets and with the determination of claims all as provided in this decree.

(2) All persons, firms and corporations domiciled or resident within the State of Montana asserting claims against Federal Surety Company including those claiming liens or other rights in or to specific property, are ordered to file proof of their claims with the Clerk of this Court on or before the 18th day of December, 1932. Every proof of claim so filed shall be itemized and sworn to, and shall state with particularity the nature and origin of the claim so asserted, the actual consideration therefor, when the same has become or will become due, whether any and what se-

curity is held therefor, whether any and what payments have been made thereon, whether Federal Surety Company was indebted for the amount claimed as surety or principal, that the sum claimed is justly due from said Federal Surety Company, and that the claimant has not, nor has any person for the claimant's use, received any security or satisfaction on account of said claim, except as therein set forth.

(3) The Receiver shall forthwith cause to be published in a newspaper of general circulation in the City of Great Falls, Montana, once each week, for three (3) consecutive weeks, a notice to all persons, firms or corporations resident in the State of Montana having claims against Federal Surety Company, advising them with respect to filing of claims, the powers of the Receiver with respect thereto, as herein provided, and the time as herein provided within which all claims shall be filed.

[fol. 37] (4) Said Receiver is authorized to examine the claims so filed and to make findings thereon, allowing or disallowing, in whole or in part, each and all of said claims, and to file in this cause, as soon as possible after the time for filing claims has expired, a written report setting forth, for the confirmation of this Court, the results of such findings, subject to the rights of E. W. Clark, Receiver and/or liquidating officer, as aforesaid, or of any claimant or claimants, to object to any finding so made, such objection to be filed in writing in this cause at such time as the Court may hereafter prescribe.

(5) In the event that any creditor or creditors, or claimant or claimants shall not so present or file their claims on or before the 1st day of December, 1932, it is hereby ordered that they and each of them shall be debarred from participating in any dividend or distribution that may be made in these proceedings, or from any interested in and to the properties administered by the Receiver, or any proceeds derived from a sale or other disposition thereof.

(6) That D. A. Crichton, Receiver, as aforesaid, take possession of and conserve, manage and dispose of, as in this decree provided, all real estate and tangible personal property situated within the State of Montana, title to which was held by Federal Surety Company September 25, 1931, and has passed to E. W. Clark, Receiver and/or liquidating officer, as aforesaid. That the rentals, profits and proceeds

of property so held, managed and disposed of be held and disbursed by the said D. A. Crichton, Receiver, as hereinafter provided.

(7) That D. A. Crichton, Receiver as aforesaid, be and he is hereby directed to assist and cooperate with E. W. Clark, Receiver and/or liquidating officer as aforesaid, in the collection, sale or other disposal of all claims of Federal Surety Company collectible in Montana, whether upon open account, promissory note, or otherwise, and whether unsecured or secured by lien on property situated in Montana; to join E. W. Clark, Receiver and/or liquidating officer as aforesaid, in the execution and delivery of any release, receipt or satisfaction essential to or which will facilitate the collection, sale or other disposal of any such claim determined upon by the said Clark, Receiver and liquidating officer as aforesaid.

[fol. 38] (8) If and when claims allowed by Order of this Court, either upon recommendation of the Receiver or after hearing, are allowed by Order of the District Court of the State of Iowa, in and for Scott County, as claims entitled to share in the assets coming into the hands of the liquidating officer along with other claims of similar rank, D. A. Crichton, Receiver as aforesaid, shall forthwith transfer and remit to E. W. Clark, Receiver and/or Liquidating officer as aforesaid, all money and property in his hands as such Receiver, except so much thereof as has been determined by Order of this Court to be subject to specific liens or rights, and except so much thereof as may be necessary to pay and discharge costs of administration in this proceeding, including the compensation of D. A. Crichton, Receiver and of his attorneys.

(9) In the event that claims allowed and determined in this proceeding are not allowed and determined in such manner as to permit those claimants to share ratably with all other creditors of Federal Surety Company in the assets distributed by E. W. Clark, Receiver and/or liquidating officer as aforesaid, all money and property coming into the hands of D. A. Crichton, Receiver, shall be retained by him for distribution to creditors whose claims are determined in this proceeding, such distribution to be in accordance with orders of this Court to be entered upon applica-

tion then made by the said D. A. Crichton, Receiver, at that time.

(10) E. W. Clark, Receiver and/or liquidating officer, is hereby given leave to intervene at any time in this proceeding as a party in interest, to take such exceptions, make such objections and prosecute the same as would any other party in interest in this proceeding.

(11) D. A. Crichton, Receiver as aforesaid, and any other party in interest in this proceeding, are hereby given leave to apply to this Court at any time for further directions, Orders, or Decree, not inconsistent with this Decree, as may be necessary or proper and the Court retains jurisdiction of this cause to that end.

(12) It is further ordered, adjudged and decreed that the agents, attorneys, employees, and all other persons in the employ of Federal Surety Company, and all other persons, including creditors of said Company, are hereby re- [fol. 39] quired and commanded forthwith to deliver all property and assets of every nature belonging to said Federal Surety Company and situated in the State of Montana to the said D. A. Crichton, Receiver, as aforesaid, and/or the said E. W. Clark, Receiver and/or liquidating officer as aforesaid; and that the Industrial Accident Board of the State of Montana and the Clerk of the District Court of Lewis and Clark County, Montana, are hereby respectively ordered and directed to deliver all assets, bonds or money of the Federal Surety Company in their possession or control, or in the possession or control of either of them, to said D. A. Crichton, Receiver, as aforesaid, and/or the said E. W. Clark, Receiver, and/or liquidating officer, as aforesaid; and it is further ordered that the order of this court heretofore made on May 24th, 1932, in this case, granting permission to Harry O. Williard, C. W. Hay, and W. W. Wheaton, as trustees of the Gordon-Campbell Kevin Syndicate, to levy executions issued upon judgments heretofore obtained by them against the Federal Surety Company be and the same is hereby revoked, annulled and set aside.

It is further ordered, adjudged, and decreed that all former agents, attorneys and employees of said Federal Surety Company, and all creditors of the Federal Surety Company, and generally all persons, firms and corporations

whatsoever are hereby enjoined from interfering with the possession and control by the said Receivers of the property, assets and effects of said Federal Surety Company hereinbefore in this decree referred to.

H. H. Ewing, Judge.

That said Harry O. Williard, W. W. Wheaton and C. W. Hay, as Trustees, as aforesaid, were given notice thereafter of the entry of said Order Confirming Appointment of Receiver and, thereafter, on the 31st day of August, 1932, said Williard, Wheaton and Hay, as Trustees, as aforesaid, served upon all counsel for Plaintiff and Defendant, Clark, their Motion, in the words and figures as follows, to-wit:

MOTION TO VACATE ORDER AND DECREE—Filed Aug. 31, 1932

Come now Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell Kevin Syndicate, a [fol. 40] common law trust, judgment creditors of Federal Surety Company of Davenport, Iowa, having an execution lien upon certain property of the said Federal Surety Company of Davenport, Iowa, situated within the State of Montana, and move this Honorable Court to vacate and annul the order and decree herein given and made on the 25th day of August, 1932, entitled "Order Confirming Appointment of Receiver," upon the following grounds and for the following reasons, to-wit:

(1) That the facts alleged in the Complaint and Cross Complaint in said action are not sufficient to justify the appointment of a Receiver of the property of Federal Surety Company of Davenport, Iowa.

(2) That the court was without jurisdiction to appoint a Receiver in said action.

(3) That said Order, insofar as it directs the said Receiver to collect the property of Federal Surety Company of Davenport, Iowa, and particularly that portion thereof heretofore levied upon under Execution issued out of the District Court of the Tenth Judicial District of the State of Montana, in and for the County of Fergus, in the case entitled "Harry O. Williard, and others, plaintiffs, vs. Federal Surety Company, defendant," and to transmit the same

out of the jurisdiction of the State of Montana without first paying the Montana creditors of said Federal Surety Company of Davenport, Iowa, is illegal, erroneous and contrary to the public policy of the State of Montana.

This motion will be based upon the records and files in this action, and upon the Affidavit of Harry O. Williard herewith served and filed.

As a separate and distinct Motion, the said Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell Kevin Syndicate, a common law trust, judgment creditors of Federal Surety Company of Davenport, Iowa, situated with the State of Montana, respectfully move the Court that the said order confirming appointment of Receiver made and entered in this action on the 25th day of August, 1932, be modified as follows, to-wit:

(1) By striking from said Order lines 7 to 27 inclusive of page 2 thereof, reading as follows:

[fol. 41] "That thereupon the corporate existence of Federal Surety Company terminated, and title to all property heretofore owned by it passed to the Commissioner of the Department of Insurance of the State of Iowa in his capacity as Receiver and/or liquidating officer as aforesaid.

"That the assets owned by the former Federal Surety Company, wherever situated, should be liquidated and distributed ratably to all persons having claims against Federal Surety Company, subject to any liens and rights of creditors acquired on or prior to September 25, 1931, in or to specific property.

"That this Court has and should assert jurisdiction of all property owned by Federal Surety Company, title to which passed to E. W. Clark, Receiver and/or liquidating officer as aforesaid and situated in the State of Montana for the purposes, among other things of (1) determining the extent of liens or other rights acquired in or to such property prior to the dissolution of Federal Surety Company as aforesaid; (2) assuring to residents of Montana a distribution out of the assets owned by Federal Surety Company wherever situated; (3) assisting said Receiver and/or liquidating officer with and facilitating the liquidation of assets owned by Federal Surety Company under orders of the Iowa court. It is therefore, determined, ordered, adjudged and decreed as follows:"

(2) By striking from said Order Paragraph (6) appearing on Page 4 thereof, reading as follows:

"That D. A. Crichton, Receiver as aforesaid, take possession of and conserve, manage and dispose of, as in this decree provided, all real estate and tangible personal property situated within the State of Montana, title to which was held by Federal Surety Company September 25, 1931, and has passed to E. W. Clark, Receiver and/or liquidating officer, as aforesaid. That the rentals, profits and proceeds of property so held, managed and disposed of be held and disbursed by the said D. A. Crichton, Receiver, as hereinafter provided."

And insert in lieu thereof the following:

"That the said D. A. Crichton, Receiver as aforesaid take possession of and conserve and manage and dispose of as in this decree provided all real estate and tangible [fol. 42] personal property situated within the State of Montana, title to which was held by Federal Surety Company on the 25th day of August, 1932, excepting, however, any of such property previously seized under Writs of Execution or Attachment duly issued out of any of the Courts of this State."

(3) By striking all of paragraphs (8) and (9) of said Order appearing on pages 4 and 5 thereof, and reading as follows:

"(8) If and when claims allowed by Order of this Court either upon recommendation of the Receiver or after hearing, are allowed by Order of the District Court of the State of Iowa, in and for Scott County, as claims entitled to share in the assets coming into the hands of the liquidating officer along with other claims of similar rank, D. A. Crichton, Receiver as aforesaid, shall forthwith transfer and remit to E. W. Clark, Receiver and/or Liquidating officer as aforesaid, all money and property in his hands as such receiver, except so much thereof as has been determined by Order of this Court to be subject to specific liens or rights, and except so much thereof as may be necessary to pay and discharge costs of administration in this proceeding, including the Compensation of D. A. Crichton, Receiver and of his Attorneys.

"(9) In the event that claims allowed and determined in this proceeding are not allowed and determined in such manner as to permit those claimants to share ratably with all other creditors of Federal Surety Company in the assets distributed by E. W. Clark, Receiver and/or Liquidating Officer as aforesaid, all money and property coming into the hands of D. A. Crichton, Receiver, shall be retained by him for distribution to creditors whose claims are determined in this proceeding, such distribution to be in accordance with orders of this Court to be entered upon application then made by the said D. A. Crichton, Receiver, at that time."

(4) By striking from pages 5 and 6 thereof, the following portion of paragraph (12) thereof:

"and/or the said E. W. Clark, Receiver and/or liquidating officer as aforesaid; and that the Industrial Accident Board of the State of Montana and the Clerk of the District Court [fol. 43] of Lewis and Clark County, Montana, are hereby respectively ordered and directed to deliver all assets, bonds or money of the Federal Surety Company in their possession or control, or in the possession or control of either of them, to said D. A. Crichton, Receiver, as aforesaid, and/or the said E. W. Clark, Receiver, and/or liquidating officer, as aforesaid,"

and inserting in lieu thereof a direction to the Receiver to pay the claims of Montana creditors in full before remitting any portion of said assets to the Iowa receiver.

(5) By striking from paragraph (12) on page 6 of said Order, the following portion thereof:

"and it is further ordered that the order of this court heretofore made on May 24th, 1932, in this case, granting permission to Harry O. Williard, C. W. Hay and W. W. Wheaton, as Trustees of the Gordon Campbell Kevin Syndicate, to levy executions issued upon judgments heretofore obtained by them against the Federal Surety Company be and the same is hereby revoked, annulled and set aside,"

and insert in lieu thereof a direction to the Receiver to recognize the validity of levies made under Execution issued upon judgment obtained by these moving parties.

This motion is made and renewed separately as to each of the paragraphs above mentioned, and is based upon the following grounds:

(1) That the original Order appointing the Receiver in this action made and entered on the 26th day of March, 1932, was null and void and did not have the effect of drawing into the custody of this Court the property of Federal Surety Company of Davenport, Iowa, in the possession of the Industrial Accident Board of the State of Montana, or the moneys in the possession of the Clerk of the District Court of the First Judicial District of the State of Montana;

(2) That at the time the order confirming the appointment of Receiver was made herein on the 25th day of August, 1932, these moving parties had a good and valid execution lien upon said property of Federal Surety Company of Davenport, Iowa, in the custody of the Industrial Accident Board and in the custody of the Clerk of the Dis-[fol. 44] trict Court of the First Judicial District of the State of Montana;

(3) That under the law of this state the defendant, Federal Surety Company of Davenport, Iowa, was continued in existence for the purpose of being sued so long as any policy or liability remained outstanding against it in this state;

(4) That under the law of this state, Montana creditors of Federal Surety Company of Davenport, Iowa, are entitled to be paid in full the amount of their claims against said Federal Surety Company out of assets of said Federal Surety Company of Davenport, Iowa, situated within the State of Montana before any portion thereof is remitted to the foreign Receiver;

(5) That by virtue of the levy of Execution made under Writs issued upon the Judgment obtained by these moving parties the property levied upon was drawn into the custody and control of the District Court of the Tenth Judicial District of the State of Montana, and the District Court of the Eighth Judicial District of the State of Montana had no jurisdiction to interfere with such custody and control of the District Court of Fergus County by entry of its order made on August 25, 1932.

This motion will be based upon the records and files in this action and upon the Affidavit of Harry O. Williard hereto attached.

Louis P. Donovan, Belden & DeKalb, Attorneys for Harry O. Williard, W. W. Wheaton, C. W. Hay, as Trustees of Gordon Campbell Kevin Syndicate.

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF MONTANA,
County of Fergus, ss:

Harry O. Williard, being first duly sworn, deposes and says:

That he, together with C. W. Hay, and W. W. Wheaton are the duly elected, qualified and acting Trustees of Gordon Campbell-Kevin Syndicate, a common law trust; that [fol. 45] Affiant makes this Affidavit for and on behalf of said Gordon Campbell-Kevin Syndicate and his co-trustees in support of a Motion herein;

That on the 15th day of January, A. D. 1925, in an action instituted against said Trustees and said Gordon Campbell-Kevin Syndicate in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, by Gordon Campbell Petroleum Company, a corporation, on an alleged cause of action on an account stated, the Plaintiff in said last mentioned action caused to be filed an Affidavit for an Attachment in due form, and caused to be executed an Undertaking on Attachment, executed by Federal Surety Company, a corporation, and which Affiant alleges is the corporation named as a defendant in the above entitled action; that thereafter such proceedings were had and made in the said action so instituted by said Gordon Campbell Petroleum Company that a judgment was duly given and made in said District Court in favor of said Gordon Campbell Petroleum Company against the said Syndicate and the then trustees thereof, for the sum of $40,903.94, with interest at the rate of eight per cent per annum from March 4, 1924, together with costs, amounting in all to $45,448.24;

That thereupon the said Gordon Campbell Kevin Syndicate and its said Trustees appealed from the said judgment to the Supreme Court of the State of Montana therefrom

and on the 28th day of January, 1926, the said judgment so entered in favor of said Gordon Campbell Petroleum Company against said Syndicate and its said Trustees was reversed and the said cause was remanded to the said District Court of Cascade County with directions to enter judgment in favor of said Syndicate and its said Trustees and against the Plaintiff, all of which was done, and all of which proceedings on appeal appear in Vol. 75 of the Montana Reports, page 261;

That thereafter the said Gordon Campbell-Kevin Syndicate and its then Trustees commenced an action in the District Court of the Tenth Judicial District of the State of Montana, in and for the County of Fergus, against said Federal Surety Company for the sum of $10,000.00, together with interest at the rate of eight per cent per annum from the 2nd day of March, 1926, amounting to the sum of $14,968.90, besides costs of suit amounting to $10.50, all of which appears as is fully set forth in a full, true and cor-
[fol. 46] rect copy of the Judgment Roll in said last named action, hereunto annexed, marked Exhibit No. 1 and by reference thereto made a part hereof;

That during and throughout the said proceedings in said last named cause, the said Defendant, Federal Surety Company, was represented by duly and regularly licensed and admitted attorneys and counsellors at law, and who were duly and regularly notified of the setting for trial of said action, and who were present thereat, and who made no other or further motions or objections than are set forth in the minutes of the Court, contained in said Judgment Roll, and that said Judgment, as set forth in said Judgment Roll, was duly given and made on the 20th day of May, 1932, and that no appeal has been perfected therefrom, or sought therein, nor has any Bill of Exceptions been tendered or offered within the time allowed by law therefor, nor has the time therefor been extended in any manner, and that due notice of entry of judgment therein was given, all as set forth in copy thereof, hereunto annexed, marked Exhibit No. 2 and by reference thereto made a part hereof;

That thereafter Affiant and his co-plaintiffs and said Syndicate caused to be issued out of the District Court of the Tenth Judicial District of the State of Montana, in and for the County of Fergus, aforesaid, in said cause, so instituted by them against said Federal Surety Company, a

Writ of Execution, signed by the Clerk of Court thereof and sealed with the seal of said Court, and directed to the Sheriff of Lewis and Clark County, Montana, and that thereupon the said Sheriff of Lewis and Clark County, Montana, duly levied upon certain property and bonds of said Federal Surety Company in the hands of A. H. Stafford, Commissioner of Agriculture of the State of Montana, amounting to about $19,000.00 and Affiant exhibits hereto, as Exhibit No. 3, a full true and correct copy of said Writ of Execution and, thereafter, on or about the 26th day of May, 1932, the said Sheriff of Lewis and Clark County made a further levy upon the sum of about $8,500.00 of funds in the hands of the Clerk of the District Court, in and for Lewis and Clark County, Montana, belonging to the said Federal Surety Company, its officers or agents, in trust therefor, and that while, as Affiant is informed and believes, the same was not necessary, the consent and ratification of this Honorable Court therefor in [fol. 47] the above entitled action was obtained on the 24th day of May, 1932, all of which appears in the files and records in the above entitled action, to which reference is hereby made;

That thereafter a Motion was made to discharge and annul the said Order of May 24th, so granting leave to levy the said Execution and ratifying the same, all of which appears in the files and records herein; that thereafter this Honorable Court did sustain the said Motion to so annul the said Order, all as appears in the files and records herein;

That Affiant and his said co-trustees and the said Gordon Campbell-Kevin Syndicate have not collected the said Judgment, and the same remains wholly unpaid, but as Affiant is informed and believes, together with the said judgment of Affiant, his co-trustees and said Gordon Campbell-Kevin Syndicate, there are Montana creditors of said Federal Surety Company having claims and demands aggregating in the neighborhood of about $25,000, and that the total known assets of said Federal Surety Company in the State of Montana are represented by the said funds in the hands of said Treasurer of the Industrial Accident Board and in the hands of the Clerk of the Court of Lewis and Clark County, Montana, as aforesaid; that Affiant is further informed and believes that the liabilities of said Federal Surety Company are such that after all of its

assets are marshalled in the State of Iowa, only a few cents on the dollar will remain to be paid the creditors of said Federal Surety Company; that such information was directly obtained by the Attorneys for Affiant, and his said co-trustees, from the direct and responsible authority of one of the attorneys for said Federal Surety Company and its alleged Receiver in the State of Iowa;

That the Order and Decree of this Court, made on the 25th day of August, 1932, directing the Receiver herein to collect the assets aforesaid, and ultimately transmit the same out of this jurisdiction, was made and entered without Notice to Affiant, his co-trustees or the said Gordon Campbell-Kevin Syndicate, or the attorneys therefor, and without their presence, and that if the said Order stands and remains as the Order of this Court, Affiant and his co-trustees will be greatly injured and damaged in common with all of the Montana creditors, including the State of [fol. 48] Montana, who is one of said creditors, of said Federal Surety Company;

That the defendant, Federal Surety Company, is and at all of the times herein mentioned was a foreign surety company organized under the laws of the State of Iowa and transacting a surety company business within the State of Montana until the 25th day of September, 1931, and that in connection with the business of said Federal Surety Company within the State of Montana it complied with the requirements of the law of the State of Montana regulating the admission of such companies to transact business in the state, and appointed in writing the Insurance Commissioner of this state to be the attorney of said Federal Surety Company in this state upon whom all process in any proceeding against such company could be served and by the terms or said power of attorney, the said Federal Surety Company did stipulate and agree on its part that any lawful process against the Federal Surety Company which was served on said attorney should be of the same legal force and validity as if served upon the said company, and that the said authority of said attorney should continue in force so long as any policy or liability of said Federal Surety Company remained outstanding against the said Federal Surety Company in the State of Montana; and a certificate of such appointment duly certified and authenticated was filed in the office of the Insurance Com-

missioner of the State of Montana a long time prior to the 25th day of September, 1931, and said Certificate was not, in any manner, revoked, vacated or annulled.

Harry O. Williard.

Subscribed and sworn to before me this 29th day of August, A. D. 1932. My commission expires June 26th, 1934. C. C. Williamson, Notary Public for the State of Montana, Residing at Lewistown, Montana. (Seal.)

[fol. 49] EXHIBIT NO. 1 TO AFFIDAVIT

Judgment Roll

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF FERGUS

HARRY O. WILLIARD, C. W. HAY, and W. W. WHEATON, as Trustees of the Gordon Campbell-Kevin Syndicate, a Common-law Trust, Plaintiffs,

vs.

FEDERAL SURETY COMPANY, a Corporation, Defendant

Amended Complaint

Plaintiffs complain and allege:

I

That on or about the month of April, 1921, by virtue of Articles of Trust in writing, signed and executed by Gordon Campbell, Helen M. Campbell and L. C. Stevenson, there was created a common law trust, to operate under the name of Gordon Campbell-Kevin Syndicate; that said common law trust still exists and operates and has existed and operated at all times hereinafter mentioned since its organization, with its principal office and place of business designated and being at Lewistown, Montana; that during the month of January, 1925, and down to the month of January, 1926, the trustees of said common law trust, duly and regularly elected, qualified and acting, were Harry O.

Williard, W. D. Roy and E. M. Harvey; that since the 5th day of January, 1926, the trustees of said common law trust, were the above named plaintiffs, Harry O. Williard, C. W. Hay and W. W. Wheaton, who at all times since have been and still are the duly and regularly elected, qualified and acting trustees of the said common law trust;

II

That at all times hereinafter mentioned, the defendant, Federal Surety Company, was, and still is a corporation, created, organized and existing under and by virtue of the [fol. 50] laws of Iowa, but duly licensed and authorized, to do and transact business in the State of Montana, and at all of said times and at the present time having and maintaining its duly constituted agent in the State of Montana for the purpose of transacting business in the State of Montana *for the purpose of transacting business in the State of Montana,* and upon whom service of process in any action against it may be made.

III

That on or about the 15th day of January, 1925, the Gordon Campbell Petroleum Company commenced an action in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, by filing a verified complaint against the said common law trust, Gordon Campbell-Kevin Syndicate, plaintiff, and its then trustees, Harry O. Williard, W. D. Roy and E. M. Harvey, on an alleged cause of action based upon an alleged account stated, for the sum of Forty-one Thousand ($41,000.00) Dollars, and in the said action caused to be executed in behalf of said plaintiff, an affidavit for attachment, and furnished and provided an undertaking on attachment in the sum of Ten Thousand Dollars ($10,000.00), a copy of which said Undertaking on attachment is hereto appended, marked Exhibit "A", and by reference thereto made a part hereof, and which said undertaking on attachment was duly and regularly executed for and in behalf of said attachment by the said defendant, Federal Surety Company; that the reference in said bond to Gordon Campbell-Kevin Syndicate, a corporation, was intended to describe the above named plaintiff; that said

obligation was to be performed at the place of business of plaintiff at Lewistown, Fergus County, Montana; that at the said time, the said Syndicate was the owner of a large amount of oil and gas property consisting of oil and gas leases, all in the Kevin Sunburst Oil Field in the County of Toole, State of Montana, and books of account and office furniture and fixtures, and plaintiffs aver that all of the same were properly classified and described as chattel or personal property and chattels real, or property partaking both of the nature of personal property and real estate, and that the said plaintiff in the said action so filed in the said District Court of the Eighth Judicial District of the [tol. 51] State of Montana, in and for the County of Cascade, caused writs of attachment to issue out of said court, signed by the Clerk thereof and attested by the seal of said Court and directed to the Sheriffs of Toole and Cascade Counties, Montana, with instructions to the said Sheriffs of Toole County and Cascade County, Montana, to levy upon all of the property and property rights of the said Gordon Campbell-Kevin Syndicate, a common law trust, and that in obedience to the said writs of attachment the said sheriffs, on or about the 15th day of January, 1925, seized and levied and placed a cloud upon all and singular the property of the said Gordon Campbell Kevin Syndicate, including all of the oil and gas leases belonging to the Gordon Campbell-Kevin Syndicate, in the said Kevin Sunburst Oil field; that in complying, or attempting to comply with the said instructions of the attorney for plaintiff, in said action, and in said writ of attachment, the said Sheriff of Toole County, Montana, on the 17th day of January, 1925, filed in the office of the County Clerk and Recorder of Toole County, Montana, a copy of said writ of attachment, together with a description of the property standing upon the records of the said County in the name of the defendant, Gordon Campbell-Kevin Syndicate, in said action, and a notice that the same was attached, and also a description of the leasehold interests belonging to the said defendant, Gordon Campbell-Kevin Syndicate, or defendants, and standing in the name of some other person therein designated by name, and a notice that such property and any interest of the defendant, Gordon Campbell-Kevin Syndicate, or defendants, therein was attached a copy of the said instrument so filed in the office of the County Clerk and Recorder in Toole County is hereunto

attached, marked Exhibit "B", and by reference thereto hereof made a part; that by reason of said levy or attempted levy of said writ of attachment, plaintiffs' title to all of the property described in said Exhibit "B" was clouded and rendered unmarketable and unmerchantable; that immediately after the commencement of the said action by the said Gordon Campbell Petroleum Company in the said District Court against the said Gordon Campbell-Kevin Syndicate, and its then Trustees, the said trustees consulted with and employed Belden & DeKalb and Merle C. Groene, of Lewistown, Montana, and Louis P. Donovan [fol. 52] of Shelby, Montana, attorneys at law, for the purpose of dissolving and annulling the said attachment, and securing a release of the said property from attachment, and removing such cloud and encumbrance and that the said attorneys entered upon their said employment but advised the said Gordon Campbell-Kevin Syndicate, and its then trustees, that they could find no formal defects entitling them to move summarily for a dissolution of said attachment, and the removal of the said cloud created thereby, and that it would be necessary to secure a dissolution of the said attachment and removal of the said cloud created thereby by and through a defense on the merits of said cause, and that insofar as the merits of said cause were concerned, it was their opinion that the plaintiff, Gordon Campbell Petroleum Company, was a company possession three directors, two of whom were, at the time of the alleged statement of account, trustees of the Gordon Campbell-Kevin Syndicate, with whom said account was alleged to have been stated, and that the Gordon Campbell Petroleum Company was largely owned and controlled by Gordon Campbell, who was also one of the said trustees of the said Syndicate at that time; and that the said attorneys did undertake to secure a dissolution of the said attachment and removal of such cloud by such defense, and that so far as the merits of the said cause were concerned, the said attorneys advised that they expected to experience but little difficulty and that the action, in and of itself, would offer little or no embarrassment to the defendants aside from the issuance of said writ of attachment and the levy or attempted levy thereupon and cloud created thereby upon all of the said property of the said defendant, Gordon Campbell-Kevin Syndicate, or defendants, and that by reason of the issuance of said

writ of attachment, the said trustees of Gordon Campbell-Kevin Syndicate were obliged to employ, and did employ, the said attorneys above named for the purpose of dissolving the said attachment and removal of the cloud created thereby by and through such defense on the merits, for a reasonable fee, which plaintiffs alleged to be Twelve Thousand Five Hundred ($12,500.00) Dollars; that there was no other available means of testing the right of the said Gordon Campbell Petroleum Company to the issuance of the said writ of attachment except by a trial of said action upon [fol. 53] the merits; that the said attorneys entered upon said employment and consented to, and did, defeat the said action for the said purpose; and that thereafter, on or about the 15th day of February, 1926, the defendants in said action, Gordon Campbell-Kevin Syndicate, and the trustees thereof, recovered a judgment in said action duly given and made by the Supreme Court of the State of Montana, and the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, duly given, made and entered pursuant to the remittitur issued out of the Supreme Court of the State of Montana, and whereby the said writ of attachment and levies and attempted levies made thereunder, and clouds created thereby, were dissolved and annulled and set aside.

IV

That the said issuance of said writ of attachment and the levy and cloud created thereby was and were wrongful and was maintained under the said action by the Gordon Campbell Petroleum Company from the 15th day of January, 1925, to on or about the 15th day of February, 1926, and that during the maintenance of said action, the said properties so attached and clouded by and through the said writ, and the levy and attempted levy thereof, became greatly depreciated in value since the said properties consisted wholly of oil and gas leases and property capable of rapid depreciation in value by and through the efflux of time and were, during the time the said attachment and cloud created thereby were maintained, properties which plaintiffs could and would have sold except they were prevented by said attachment and cloud; that the said properties depreciated in value during the period of time the same were held under said attachment and the cloud created thereby,

in the sum of Twenty-five Thousand ($25,000.00) Dollars; and that plaintiffs did sell certain of its said property interests as hereinafter set forth; that by reason of the issuance of said writ of attachment and the cloud created thereby upon the said properties of plaintiff, and particularly upon the oil and gas leaseholds standing in the name of Lee M. Ford, trustee, as described in Exhibit "B" hereunto attached, plaintiff was prevented from selling the said properties standing in the name of Lee M. Ford, trustee, [fol. 54] or any thereof, during the time that said cloud existed upon plaintiffs' title thereto at the reasonable market value thereof, or at any value except a sum greatly less than the reasonable market value of said oil and gas leaseholds, and that if it had not been for the issuance of said writ of attachment, plaintiff could and would have sold said oil and gas leaseholds standing in the name of Lee M. Ford, trustee, in or about the month of September, 1925, at the reasonable market value thereof, but by reason of the issuance of the said writ of attachment, and the levies and attempted levies made thereunder, plaintiff was obliged to sell and did sell on or about the month of September, 1925, the said oil and gas leaseholds standing in the name of said Lee M. Ford, Trustee, at a price approximately Sixty Thousand Dollars ($60,000.00) less than the reasonable market value thereof, if the said writ of attachment had not been issued, and a price approximately Sixty Thousand Dollars ($60,000.00) less than the amount at which plaintiff could and would have sold the same if the said writ of attachment had not been issued; that in the conduct and defense of said action in which the said writ of attachment was issued, the said defendants in said action necessarily incurred expense in maintaining their said defense, for the purpose of securing the dissolution of the said attachment and the removal of said cloud, in the sum of Four Hundred Eighteen and 70/100 ($413.70) Dollars, which consisted of items which could not be taxed as costs in said action but which arose and were incurred as follows, to-wit: In the sum of Thirty-two and 10/100 Dollars ($32.10), which was necessarily incurred in good faith by securing from one Dudley Crowther, a court reporter, a transcript of certain testimony of Gordon Campbell given in an action instituted in the district court of the Nineteenth Judicial District of the State of Montana, in and for Toole County, germane to questions arising in the said action in which the said at-

tachment was so issued, and to be used for impeachment purposes; and in the further sum of Three Hundred Eighty-six and 60/100 Dollars ($386.60), paid to one W. B. Finlay, certified public accountant, for services rendered the said Gordon Campbell-Kevin Syndicate in making an audit of the books, papers, and records of the said Syndicate, then held under attachment in said action, so instituted in the [fol. 55] said District Court of the Eighth Judicial District, all necessarily incurred in good faith for the purposes of enabling the said Gordon Campbell-Kevin Syndicate to make an intelligent presentation of its defense in said action for the purpose of securing a dissolution of said attachment, and made necessary by unprecedented action of the said Gordon Campbell Petroleum Company in attaching in said action all and singular the books, records and papers of the said Syndicate, then in its own hands, and placing the same in the hands of the Sheriff of Cascade County, Montana, and thereby preventing the possession thereof by the said Gordon Campbell-Kevin Syndicate; that there were further taxed as costs in said action the sum of Five Hundred Sixty-one and 80/100 Dollars ($561.80), none of which have been paid;

V

That plaintiffs have been damaged by the wrongful issuance and levy of the said attachment, and resulting cloud, in the several amounts above set forth all of which said sums were damages proximately incurred by virtue of the said attachment, and cloud, none of which have been paid by the defendant; that plaintiffs have made demand upon said defendant for the payment of the full amount of its liability under said bond, but defendant has failed, neglected and refused to pay plaintiffs said sum or any part thereof.

Wherefore Plaintiffs pray judgment against the said defendant in the sum of Ten Thousand ($10,000.00) Dollar-, together with their costs and disbursements herein expended and incurred, together with interest on said sum from the 28th day of January, 1926.

Belden & DeKalb, Merle C. Groene, Louis P. Donovan, Attorneys for Plaintiffs.

(Duly verified.)

[fol. 56] EXHIBIT "A" TO EXHIBIT 1

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR CASCADE COUNTY

GORDON CAMPBELL PETROLEUM COMPANY, a Corporation, Plaintiff,

vs.

GORDON CAMPBELL KEVIN SYNDICATE, a Corporation; HARRY O. WILLIARD, E. M. Harvey, W. D. Roy, as Trustees of Gordon Campbell Kevin Syndicate, Defendants

Undertaking on Attachment

Whereas, the above named Plaintiff has commenced or is about to commence, an action in the above entitled Court against the above named Defendants, to recover of Defendants, Gordon Campbell Kevin Syndicate, a corporation, Harry O. Williard, E. M. Harvey, W. D. Roy, as Trustees of Gordon Campbell Kevin Syndicate, the sum of Forty-one Thousand Six Hundred Fifty-one and 07/100 Dollars with 6 per cent per annum interest on the sum of $40,903.94 from the 3rd day of March, 1924, and on the sum of $747.07 from Jan. 1, 1925, alleged to be due and owing from said Defendant- to said Plaintiff and is about to issue out a Writ of Attachment in said action against the property of said Defendants as allowed by law in such cases, and have made the necessary affidavit therefor.

Now, therefore, in consideration of the premises, and of the issuing of said Writ of Attachment, we, the undersigned Sureties, residents of said County, State of Montana, hereby undertake and bind ourselves in the sum of Ten Thousand Dollars, that if the Defendant- recover judgment in said action, or if the Court shall finally decide that the plaintiff was not entitled to any attachment, the Plaintiff will pay all costs that may be awarded to the Defendant-, and all damages he may sustain by reason of the issuing out of the attachment not exceeding the sum of Ten Thousand and No/100 Dollars.

Witness our hands this 15th day of January, A. D. 1925.

Federal Surety Company, by D. A. Crichton, Attorney-in-fact.

(Duly verified.)

Filed Jan. 15th, 1925.

George Harper, Clerk. J. E. Hilgard, Deputy Clerk. (Seal.)

[fol. 57] EXHIBIT "B" TO EXHIBIT 1

Notice of Attachment

GORDON CAMPBELL PETROLEUM COMPANY, a Corporation, Plaintiff,

vs.

GORDON CAMPBELL KEVIN SYNDICATE, HARRY O. WILLIARD, E. M. Harvey, and W. D. Roy, as Trustees of the Gordon Campbell Kevin Syndicate, Defendants

Notice is hereby given that by virtue of a Writ of Attachment issued out of the Eighth Judicial District Court of the State of Montana, in and for the County of Cascade, I have this day attached all right, title and interest of the above named Defendants *Defendant* in the following described property, to-wit:

Lessor	Description	Sec., twp., rge.
H. F. Altman	E. ½ NW. ¼, S. ½ NE. ¼	15, 34, 3 W
A. L. Beaupre	W. ½ SW. ¼	5, 35, 2
	N. ½ N. ½	27, 34, 3
C. E. Carlson and W. R. C. Stewart	NE. ¼ NE. ¼, W. ½ E. ½, SE. ¼ SE. ¼	25, 35, 3
Elmer Dahlquist	W. ½ SE. ¼	21, 35, 3
Robert Davidson	E. ½ NE. ¼	28, 35, 3
Albert Goeddertz, Jr.	NW. ¼ NE. ¼, E. ½ NW. ¼, SWNW. ¼	11, 36, 3
	SESE	17
	E. ½ NE	20
	NW. ¼ NW. ¼	21
Albert Goeddertz, Jr.	NE. ¼, N. ½ SE. ¼	16, 35, 3
Albert Goeddertz, Sr.	SWNW., NWSW	6, 36, 2
	N. ½ N. ½, SENW., SENE	19, 36, 2
	SENE., NESE	1, 36, 3
	NESE	10
	SW. ¼	8
	NENE., S. ½ NE. ¼, SWNW	
	SW. ¼, N. ½ SE., SWSE	15
	E. ½ NE	21
	W. ½ NW	22
	S. ½ NW., NWSW	27
	N. ½ NW., N. ½ SE., SWSE., SESW	28
	S. ½ S. ½	30
Albert Goeddertz, Sr.	S. ½ SE	19, 36, 2
	SESE	22, 35, 3
	SENW., E. ½ SW., NWSE	26
	SENE	34
Martin Goldrick	W. ½ W. ½	20, 36, 3
Gideon Gunderson	Lots 1 & 2	19, 35, 2
	N. ½ NE	24, 35, 2
G. C. Larson	W. ½ SE., E. ½ SW	7, 35, 2
Imilda Larson	E. ½ SW	17, 35, 2
R. C. Lehman	S. ½ NW	3, 34, 3
John E. Lewis	E. ½ E. ½	5, 34, 3

[fol. 58] Lessor	Description	Sec., twp., rge.
Mary Solberg	W. ½ NE	29, 35, 3
Alice Steven	NE. ¼, E. ½ SE	32, 35, 3
J. J. Stinson	SW. ¼	29, 34, 3

I

You will also attach all the right, title and interest of the Gordon Campbell-Kevin Syndicate in and to those certain oil and gas leases standing of record in the name of Lee M. Ford, Trustee, covering the following described lands situated in the County of Toole, State of Montana, and described as follows, to-wit:

Lessor	Description	Sec., twp., rge.
Joseph Byrne	N. ½ NW., SENW	25, 35, 2 W
C. Lashbaugh	NE. ¼	34, 35, 2
Aurel J. Abell	NW. ¼, E. ½ SW. ¼	35, 35, 2
Edward Byrne	E. ½ SE. ¼	35, 35, 2

You will also attach all the right, title and interest of the Gordon Campbell-Kevin Syndicate in and to those certain oil and gas leases standing of record in the name of the Western Petroleum Exploration Company, covering the following described lands situated in the County of Toole, State of Montana, and described as follows, to-wit:

Lessor	Description	Sec., twp., reg.
Henry Swears	S. ½ SW. ¼	4, 35, 2 W
Sarah Swears	SW. ¼	9, 35, 2
Anna Kenny	NE. ¼	15, 35, 2
Fenna Bruins	S. ½ S. ½	10, 35, 2
		9, 35, 2

Dated at Shelby this 17th day of January, 1925.

T. H. Daley, Sheriff, by W. B. Martin, Under Sheriff.

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF CASCADE

GORDON CAMPBELL PETROLEUM COMPANY, a Corporation,

Plaintiff,

vs.

GORDON CAMPBELL KEVIN SYNDICATE, HARRY O. WILLIARD, E. M. Harvey, and W. D. Roy, as Trustees of the Gordon Campbell Kevin Syndicate, Defendants

Writ of Attachment

The State of Montana to the sheriff of Toole County, Greetings:

Whereas, The above entitled action was commenced in the District Court of the Eighth Judicial District of the

[fol. 59] State of Montana, in and for the County of Cascade, by the plaintiff in said action, to recover from the Defendants in said action the sum of Forty-one Thousand six hundred fifty-one and 01/100 ($41,651.01) Dollars Currency of the United States, besides interest at the rate of 8 per cent per annum on $40,903.94 from March 3, 1924, and interest on $747.07 from the 1st day of January, A. D. 1925, and costs of suit; and the necessary affidavit and undertaking herein being filed as required by law.

Now, we do therefore command you, the said Sheriff, that you attach and safely keep all the property of the said Defendants within your said county not exempt from Execution, or so much thereof as may be sufficient to satisfy the said Plaintiff's demand, as above mentioned, unless the said Defendants give you security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking, and hereof make due and legal service and return.

Witness H. H. Ewing, Judge of the Eighth Judicial District at the Court House in the County of Cascade, the Seal of said Court this 15th day of January, A. D. 1925.

Attest my hand and seal of said Court the day and year last above written.

George Harper, Clerk, by J. E. Hilgard, Deputy Clerk. (Court Seal.)

Filed for record January 17th, 1925, at 5:00 o'clock P. M.
J. R. MacFarlane, County Recorder.

Amended Complaint endorsed on back: "Filed Jan. 31st, 1928. Bert Replogle, Clerk."

Title of Court, Title of Cause

Answer.

Comes now the defendant above named and for its answer to Plaintiffs' amended complaint served and filed on January 31, 1928, admits, denies and alleges as follows:

I

Admits the allegations contained in paragraph II of plaintiffs' said amended complaint, and denies generally [fol. 60] and specifically each and every other allegation, matter and thing in plaintiffs' said Complaint contained, and particularly and specifically denies that the plaintiffs have been by reason of the acts therein complained of, or by any other reason attributable to defendant, damaged as set forth in said amended complaint in the sums therein mentioned, or in any other sum or sums at all.

Wherefore Defendant, having fully answered plaintiffs' amended complaint, prays that the plaintiffs take nothing and that the defendant have judgment for its costs; and for such other and further relief as is meet, just, legal and equitable in the premises.

Ayers & Polutnik, Attorneys for Defendant.

(Duly verified.)

Answer endorsed on back: "Filed this 29th day of Feb. A. D. 1928. Bert Replogle, Clerk of Court, by C. Smith, Deputy Clerk.

Title of Court and Cause

#14567

Court Minute

Friday, the 20th day of May, 1932.

This matter came on regularly for trial this day having been continued from May 19th, 1932, H. Leonard DeKalb appearing as counsel for the Plaintiffs, and Robert C. Ayres of the firm of Ayres & Ayres appearing as counsel for the Defendant. Counsel for the Plaintiffs thereupon informed the Court that they were ready for trial and counsel for the Defendant informed the court that they were not ready for trial. The case was thereupon called for trial and the following witnesses were sworn and testified on behalf of the plaintiffs, to-wit: Harry O. Williard and H. Leonard DeKalb.

Proof having been submitted and the Court being fully advised in the premises, judgment is ordered in favor of the Plaintiffs.

[fol. 61] In the District Court of the Tenth Judicial District of the State of Montana in and for the County of Fergus

Harry O. Williard, C. W. Hay, and W. W. Wheaton, as Trustees of the Gordon Campbell-Kevin Syndicate, a Common-law Trust, Plaintiffs,

vs.

Federal Surety Company, a Corporation, Defendant

Judgment

This cause came on regularly for trial before the Court, O. F. Goddard, a Judge of the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone, sitting in the place of the Judges of the Tenth Judicial District, disqualified, and having been regularly called to preside in the above entitled action, this 20th day of May, A. D. 1932, the cause having been duly and regularly set and noticed for trial, and notice having been given the respective parties, the Plaintiffs appearing in person and by and with their counsel, Belden & DeKalb, and the Defendant not appearing at the trial, and the default of the Defendant having been duly and regularly entered for such non-appearance, the Court proceeded to hear the sworn testimony and the evidence introduced in support of the allegations of the Complaint, and the law and the evidence being by the Court considered,

And the Court being fully advised in the premises, and it appearing that Plaintiffs are entitled to a judgment against the Defendant for the relief prayed for in their Complaint,

It is accordingly ordered, adjudged and decreed that Plaintiffs do have and recover of and from the Defendant, Federal Surety Company, the sum of Ten Thousand Dollars ($10,000.00), together with interest thereon at the rate of eight per cent per annum from the 2nd day of March, 1926, making a total judgment, for principal and interest, of Fourteen Thousand Nine Hundred Sixty-eight and 90/100 Dollars ($14,968.90), and for Plaintiffs' costs and [fol. 62] disbursements herein expended and incurred, hereby taxed at the sum of Ten and 50/100 Dollars ($10.50).

Done in open court this 20th day of May, A. D. 1932.

O. F. Goddard, Judge of the Thirteen- Judicial District of the State of Montana, Presiding in said Cause.

Endorsed: Filed May 20th, 1932. B. W. Walker, Clerk, by J. E. Walker, Deputy Clerk.

Judgment roll endorsed: Filed this 21st day of May, A. D. 1932. B. W. Walker, Clerk of Court, by C. Smith, Deputy Clerk.

EXHIBIT No. 2 TO AFFIDAVIT

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF FERGUS

HARRY O. WILLIARD, C. W. HAY, and W. W. WHEATON, as Trustees of the Gordon Campbell-Kevin Syndicate, a Common-law Trust, Plaintiffs,

vs.

FEDERAL SURETY COMPANY, a Corporation, Defendant

Notice of Entry of Judgment

To the above-named defendant and to its attorneys, Messrs. Ayers & Ayers and Donald Campbell:

You are hereby notified that on this 20th day of May, A. D. 1932, Judgment was rendered in the above entitled action, in favor of the Plaintiffs and against the Defendant for the relief demanded in Plaintiffs' Complaint.

Dated this 20th day of May, A. D. 1932.

Louis P. Donovan, Belden & DeKalb, Attorneys for Plaintiffs.

Service of within Notice had and received by copy thereof this 20th day of May, 1932.

Ayers & Ayers, Attorneys for Defendant.

Endorsed: Filed May 27, 1932.

[fol. 63] EXHIBIT No. 3 TO AFFIDAVIT

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF FERGUS

The State of Montana to the sheriff of Lewis and Clark County, in the State of Montana, Greeting:

Whereas, on the 20th day of May, A. D. 1932, Harry O. Williard, C. W. Hay and W. W. Wheaton, as Trustees of the Gordon Campbell-Kevin Syndicate, a common law trust, recovered a Judgment in the said District Court of the Tenth Judicial District of the State of Montana, in and for the County of Fergus, against Federal Surety Company, a corporation, for the sum of Fourteen Thousand Nine Hundred Sixty-eight and 90/100 Dollars ($14,968.90), damages, with interest thereon at the rate of eight per cent per annum until paid, together with $10.50 dollars costs and disbursements at the date of said judgment, and accruing costs, amounting to the sum of $14,979.40, as appears to us of record;

And whereas, the judgment roll, in the action in which said judgment was ordered, is filed in the Clerk's office of said Court, in the County of Fergus, and said Judgment was docketed in said Clerk's office, in said County, on the day and year first above written; and the sum of $14,979.40, with interest at the rate of eight per cent per annum from the 20th day of May, 1932, is now at the date of this Writ actually due on said judgment;

Now, you, the said sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid, and costs and accruing costs, to satisfy said judgment, out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to said debtor, on the day wherein said judgment was docketed in said County, or at any time thereafter; and make return of this writ within sixty days after the receipt hereof with what you have done endorsed thereon.

Witness the Honorable O. F. Goddard, the Judge who tried said cause, sitting in place of the Judges of the Tenth Judicial District of the State of Montana, disqualified, at

[fol. 64] the Court House in the County of Fergus, this 20th day of May, A. D. 1932.

Attest my hand and the seal of said Court the day and year last above written.

B. W. Walker, Clerk, by J. A. Walker, Deputy Clerk.
(Seal.)

That thereafter, the same came on by consent of all of said counsel for hearing on said 31st day of August, 1932, and, at said time, the said attorneys for Plaintiffs and for Defendant, E. W. Clark, presented, served and filed their objections to said Motion, in the words and figures as follows, to-wit:

OBJECTIONS TO MOTION TO VACATE ORDER AND DECREE—
Filed Aug. 31, 1932

Comes now E. W. Clark, Receiver and Liquidating Officer of Federal Surety Company, and D. A. Crichton, as Receiver of the Federal Surety Company of Davenport, Iowa, by and through their attorneys Molumby, Busha & Greenan, and Gunn, Rasch, Hall & Gunn, and objects to the Motion made on behalf of Gordon Campbell-Kevin Syndicate by and through its attorneys, L. P. Donovan and Belden & DeKalb asking to modify the Order Confirming the appointment of the Receiver duly made and given by this Court on the 25th day of August, 1932, upon the grounds and for the reason that if said Motion is sustained it would, in violation of Section 1, Article IV of the Constitution of the United States, deny full faith and credit to the public acts, records and judicial proceedings of the State of Iowa, made and entered in the District Court of the State of Iowa, in and for Scott County, a court of general jurisdiction, in the case entitled State of Iowa ex rel. John Fletcher, Plaintiff, vs. Federal Surety Company of Davenport, Iowa, Defendant, being cause No. 28238 in equity, in which cause said Federal Surety Company by decrees of said court, duly made and entered on September 25th, 1931, and December 22nd, 1931, was dissolved and E. W. Clark, Commissioner of Insurance of the State of Iowa, was then duly appointed statutory receiver and/or liquidating officer of said Federal Surety Company, and [fol. 65] vesting in him title to all property of said Federal

Surety Company, wherever situated, all of which is more fully shown in the duly exemplified copies of said decrees attached to and made a part of the answer and cross-petition of E. W. Clark as Receiver and/or Liquidating Officer of the Federal Surety Company of Davenport, Iowa, filed in this action pending in the district court of Cascade County, Montana, on the 25th day of August, 1932, to which decrees reference is hereby made.

Also, upon the further ground and for the reason that said motion, if sustained, would, in so far as it may enable resident creditors in Montana to secure a priority over non-resident creditors of the Federal Surety Company in the distribution of assets or payment of claims, constitute a violation of Section 2 of Article IV of the Constitution of the United States.

Gunn, Rasch, Hall & Gunn, Molumby, Busha & Greenan.

In conjunction therewith, the following facts were stipulated, to-wit:

STIPULATION AS TO FACTS

The moving parties, Harry Williard, W. W. Wheaton and C. W. Hay, as Trustees of the Gordon Campbell-Kevin Syndicate, and Gordon Campbell, admit that the statutory provisions of the State of Iowa in force at the time set forth in the complaint and cross-complaint in this action are correctly set forth in the said complaint and cross-complaint, and the said moving parties further admit that the copy or copies of judgments and orders attached to the cross-complaint in this action are true and correct copies of the original judgment and orders, given and made by the District Court of the State of Iowa, in and for Scott County, in the action entitled State of Iowa, ex rel. John Fletcher, plaintiff, vs. Federal Surety Company of Davenport, Iowa, defendant.

It was further agreed between the parties that each of the parties to the proceeding waived notice and time of [fol. 66] hearing of said Motions, and agreed that the same be forthwith heard and submitted to the Court and, in accordance therewith, the same were forthwith heard and submitted to the Court.

The following further proceedings were had on the said 31st day of August, 1932, and entered on the minutes of the Court, to-wit:

MINUTE ENTRIES

The Court: Let the record show that all the motions are denied.

Mr. Donovan: Let us ask for an order staying the proceedings for sixty days insofar as possession is concerned.

Mr. DeKalb: If it is understood that the Receiver will not dispose of or send any of this money out of the State of Montana until the appeal is disposed of.

Mr. Molumby: We will agree to that. Let the record show that.

Mr. DeKalb: It is agreed and understood by and between the plaintiff, the defendant and the petitioning creditor, Gordon Campbell Syndicate, and its trustees, that the Court shall make an order that none of the funds upon which the creditor, Gordon Campbell Syndicate, and its trustees, have made levy, shall be sent from the State of Montana, or otherwise disposed of than to remain in the custody of the Receiver until the determination of the proposed appeal of the Gordon Campbell-Kevin Syndicate.

The Court: The Court hereby orders that the Receiver retain in his possession the property upon which the foregoing creditor has a levy and execution until further order of the Court.

Mr. Donovan: May the record show that Harry Williard, W. W. Wheaton and C. W. Hay take exception to the orders of the Court, denying their motion to vacate the order confirming the Receiver, and also take exception to the order of the Court denying their Motion to modify the said order, and they ask for thirty days in addition to the time allowed by law in which to prepare, serve and file their bill of exceptions.

The Court: Let the time be granted.

[fol. 67] That on the 1st day of September, 1932, said D. A. Crichton petitioned the Court as follows:

PETITION FOR APPOINTMENT OF COUNSEL FOR RECEIVER—
Filed Sept. 1, 1932

Comes now D. A. Crichton, and respectfully represents to the Court that it is necessary to have the services and

advice of counsel in the above entitled matter; that he has consulted the firm of Molumby, Busha & Greenan, as such counsel, and is desirous of appointing them to act on behalf of the Receiver in all matters with reference to said Receivership.

Wherefore your Petitioner prays that he be permitted to employ the services of Molumby, Busha & Greenan as attorneys in all matters herein, and that his action in heretofore consulting and employing those services be ratified by this Court.

D. A. Crichton, Petitioner.

(Duly verified.)

Whereupon the Court made an order on said Petition as follows:

ORDER APPOINTING COUNSEL FOR RECEIVER—Filed Sept. 1, 1932

Upon reading and filing the verified Petition of D. A. Crichton, Receiver herein, and the Court being advised in the premises,

It is hereby ordered that the action of the said D. A. Crichton, as Receiver, in employing Molumby, Busha & Greenan as counsel for the Receiver, and the same is hereby ratified, and he is hereby empowered to employ their services in all matters touching said Receivership.

Dated Sept. 1, 1932.

H. H. Ewing, Judge.

Now, within the time allowed by law and the Order of Court, made herein on the 31st day of August, 1932, the said creditors, Harry O. Williard, W. W. Wheaton and C. W. Hay, as Trustees of the Gordon Campbell-Kevin Syndicate, present this as their Bill of Exceptions, of and concerning the Order made on May 24th, 1932, permitting levy of exe-
[fol. 68] cutions, as above set forth, and of and concerning their Motion to vacate and annul, and to modify the Order Confirming Appointment of Receiver, made and entered herein on the 25th day of August, 1932, which said Bill of Exceptions contains all of the evidence, or the full sub-

stance thereof, adduced and considered by the Court in the making of said Order complained of, and all of the records and proceedings in said cause, considered by the Court and pertaining to and affecting the consideration of the said Orders complained of, and pray that the same may be allowed, settled and filed herein, as a full, true and correct Bill of Exceptions herein.

Dated this 14th day of September, A. D. 1932.

Louis P. Donovan, Belden & DeKalb, Attorneys for Harry O. Williard, W. W. Wheaton, and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, a Creditor Affected Thereby.

ORDER SETTLING BILL OF EXCEPTIONS—Filed Oct. 13, 1932

STATE OF MONTANA,
County of Cascade, ss:

I, H. H. Ewing, one of the Judges of the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, hereby certify:

That I am the Judge who passed upon and made the Orders excepted to, as shown in the foregoing Bill of Exceptions, and I further certify that the foregoing Bill of Exceptions was duly served upon all counsel for Plaintiff and Defendant, in the above entitled action, and duly and regularly came on for settlement and allowance, and

It is accordingly hereby further certified that the same is a full, true and correct Bill of Exceptions, containing all of the evidence, proceedings, papers and files and records of and pertaining to, and considered by, the undersigned, in the making and entry of the Judgment and Orders excepted to herein.

Done in Open Court this 13 day of October, A. D. 1932.

H. H. Ewing, District Judge.

NOTICE OF APPEAL—Filed Sept. 18, 1932

To John Mieyr, plaintiff; to Federal Surety Company of Davenport, Iowa, a corporation; to E. W. Clark, as Re-
[fol. 69] ceiver, and to D. A. Crichton, as Receiver, and to Messrs. Gunn, Rasch, Hall & Gunn and Messrs. Cook & Balluff and to Messrs. Molumby, Busha & Greenan, attorneys for the respective parties defendant:

You and each of you will please take notice that Harry O. Williard, W. W. Wheaton and C. W. Hay, as Trustees of Gordon Campbell-Kevin Syndicate, a common law trust, and Gordon Campbell Kevin Syndicate, a common law trust, hereby appeal to the Supreme Court of the State of Montana from that certain Judgment and Order confirming Appointment of Receiver, made and entered herein on the 25th day of August, 1932, wherein and whereby D. A. Crichton was confirmed as a Receiver herein, and wherein and whereby an Order of said Court, made on May 24th, 1932, granting Appellants leave to levy execution was revoked, annulled and set aside, and also from that certain Order made and entered herein on the 31st day of August, 1932, over-ruling Appellants' Motion filed herein August 31st, 1932, attacking the said Order and Decree made and entered, as aforesaid, on August 25, 1932, all rendered and entered, as aforesaid, in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, against the Appellants and in favor of the Plaintiff and Defendants above named, and from the whole thereof.

Dated September 17, 1932.

Louis P. Donovan, Belden & DeKalb, Attorneys for Above-named Appellants.

(Duly served.)

Clerk's certificate to foregoing transcript omitted in printing.

IN SUPREME COURT OF MONTANA

[Title omitted]

[File endorsement omitted.]

OPINION PER CURIAM—Filed April 1, 1933

Defendant Federal Surety Company prior to September 25, 1931, was a corporation organized under the laws of [fol. 70] Iowa and authorized to do business in Montana. The district court of Scott county, Iowa, in a proceeding

brought by the attorney general of that state, under statutory authority made an order an September 21, 1931, requiring the surety company to appear on September 25th and show cause why its affairs and business should not be dissolved and a receiver appointed to wind up its affairs and distribute its effects as provided by law. The order was served on the surety company and it failed to appear. The court thereupon entered a decree "that under and in accordance with the provisions of section 8964 of the Code of 1927 of the state of Iowa, the defendant, Federal Surety Company, shall be dissolved and its effects distributed." The decree also appointed E. W. Clark, commissioner of insurance of the state of Iowa, as receiver, gave him certain directions with respect to the property and the method of ascertaining and determining claims, and expressly retained jurisdiction, upon application of any party in interest, to give further orders, directions or decrees as may be necessary or proper. Clark duly qualified as receiver by filing bond and oath.

On December 22, 1931, the court, on application of the receiver, made a supplemental order and decree which recites that the court "finds, determines and adjudges: That pursuant to the power conferred by said sections, pursuant to the allegations set forth in the petition filed herein, as amended, and pursuant to good cause shown herein, as in said sections provided, this court did, on September 25, 1931, enter an order and decree in this cause, and thereby dissolved Federal Surety Company and terminated its corporate existence, and thereby appointed E. W. Clark, who was and is commissioner of insurance of the state of Iowa, as the receiver and/or liquidating officer, to take title to all property of the dissolved corporation for the purpose of liquidating and distributing its assets, as by law provided. That by virtue of the statutes hereinbefore referred to, as construed by the court of last resort in the state of Iowa, and by virtue of the proceedings in this cause, the said corporation, Federal Surety Company, ceased to exist upon the entry of the order and decree herein at 4:30 P. M. Central Standard Time, September 25, 1931, and that thereupon all its agencies ended, its employees, including attorneys, were discharged, and it was put, without exception or notice of appeal, beyond all further cor-
[fol. 71] porate activity, its existence was put to an end for

all purposes whatsoever, so that it can neither make nor take contracts, nor sue or be sued, and so that all debts to or from it became extinguished and all actions by and against it abated, and so that, as after death of a natural person, it can have no interest in the property theretofore by it controlled. That the defendant, Federal Surety Company, is, and since September 25, 1931, has been dissolved, and that its corporate existence is terminated, with the results hereinbefore determined. That E. W. Clark, receiver and/or liquidating officer of Federal Surety Company, is the successor to said corporation and as such holds title to all property owned by Federal Surety Company at the time it so ceased to exist."

On March 25, 1932, this action was commenced by Mieyr against the surety company and the receiver, Clark, in Cascade county, the complaint alleging a debt due plaintiff from the surety company, growing out of a policy of insurance for loss occasioned by reason of the ownership, maintenance, use and operation of a certain automobile. Mieyr in his complaint pleaded the decree of the Iowa court dissolving the corporation and appointing a receiver, and the Iowa laws authorizing the proceedings taken in the Iowa court. He alleged that the surety company had more than $50,000 worth of property situated in Montana, consisting of cash and a judgment in favor of the surety company; that Clark, the receiver, through agents and representatives in this state, is attempting to compromise, settle and discount the assets and procure possession thereof and remove them from the State, and that unless a receiver is appointed in this state to take charge of and preserve the property for the Montana creditors, the same would be dissipated and lost to the creditors; that the funds should be retained in Montana until the proportionate shares of the Montana Creditors is ascertained and determined and these paid out of the Montana assets before transferring any of the funds to the Iowa receiver. The complaint asked for the appointment of D. A. Critchton as receiver to take charge of the Montana assets and to hold the same until the further order of the court. It prayed also that plaintiff be decreed to have a valid claim against the surety company.

On the day the complaint was filed, the court appointed Crichton as receiver for the Montana property, the order reciting "that the receiver be vested with all the powers and [fol. 72] rights of receivers appointed by this court, and

with the power to take possession of all property heretobefore belonging to said Federal Surety Company of Davenport, Iowa, and to collect all sums owing said Federal Surety Company of Davenport, Iowa, and to keep and preserve the same, and manage and disburse the same, according to the further order of this court."

Crichton duly qualified as such receiver on March 26. Clark thereafter moved the court to discharge Crichton as receiver for want of jurisdiction in the court to make the appointment. This motion was denied on May 24, 1932.

On May 20, 1932, Harry O. Williard, W. W. Wheaton and C. W. Hay, as trustees of Gordon Campbell-Kevin Syndicate, a common law trust, and Gordon Campbell Syndicate, appellants here, obtained a judgment against the surety company in the Fergus county district court for approximately $15,000 without knowledge of the receivership proceedings in Iowa. This was after a second trial. The first resulted in a nonsuit, which judgement was reversed by this court in 91 Mont. 465, 8 Pac. (2d) 633. On May 24th these appellants appeared in this action in Cascade county by petition setting forth that they had discovered assets of the surety company within the state and had execution issued out of the district court of Fergus county upon their judgment and requested an order permitting them to levy the execution upon such property in Montana. The request was granted with the understanding, announced by the court, that no preference over other Montana creditors was given them. On July 25 Crichton filed his petition to annul the order permitting the levy of execution and gave notice that it would be heard on August 3.

On August 3 Clark served and filed an answer and cross-petition in this action. In substance it set forth his appointment as receiver by the Iowa court and pleaded the Iowa statutes authorizing the proceedings there taken; that creditors of the surety company reside in different jurisdictions and its assets are located in such jurisdictions; that there were assets in Montana amounting to $50,000 and that certain creditors were threatening suits against such property and issuing attachments, and that an ancillary receiver should be appointed to prevent irreparable damage and preferential treatment of some creditors over others. It prayed for an order confirming title to the assets of the [fol. 73] surety company in Clark and confirming the ap-

pointment of Crichton as ancillary receiver of the Montana property, with authority to care for and preserve it until the further order of the court. Mieyr filed an instrument admitting the allegations of the answer and cross-petition of Clark, and joining in the request therein made.

On August 25 the court entered an order or decree finding that the corporate existence of Federal Surety Company was terminated by the proceedings in Iowa and that title to all its property passed to Clark, as receiver, and should be distributed ratably to all creditors "subject to any liens and rights of creditors acquired on or prior to September 25, 1931, in or to specific property." It confirmed the appointment of Crichton as ancillary receiver, and directed that he receive proof of claims of all Montana creditors by requiring the claims to be filed with the clerk of court in Cascade county, and provided that when the claims allowed by order of the district court of Cascade county were allowed by the court in Iowa as entitled to share with other claims of similar rank, Crichton should transmit and remit to Clark all money and property in his hands as receiver, except such as were determined by the Cascade county court to be subject to specific liens, and such as was necessary to pay the costs of the proceedings in Montana, including the compensation of Crichton. It also provided that in the event claims allowed by the district court of Cascade county were not allowed in such manner as to permit claimants to share ratably with all other creditors of the surety company, then the money and property in the hands of Crichton should be retained by Crichton for distribution to creditors whose claims are allowed by order of the Cascade district court. The decree directed all persons to deliver to Crichton all money and property belonging to the surety company. It also revoked the order of May 24, 1932, granting permission to appellants to levy their execution. This appeal is from that decree or judgment, and from an order made thereafter denying appellants' motion to vacate or modify the decree.

The appeal presents the question whether appellants have the right to be paid the amount of their claim from the Montana property before any part of such property is transmitted to the Iowa receiver for administration through the Iowa receivership, when, as shown, their claim has been [fol. 74] reduced to judgment and execution levied after the

proceedings in the Iowa court designed to accomplish the dissolution of the corporation. Solution of the problem presented makes it necessary to determine the effect of the proceedings in the Iowa court upon the corporate life of the surety company.

The proceedings in Iowa were taken under section 8964 of the Iowa Codes of 1927 and 1931, which authorizes the commissioner of insurance to examine into the condition of corporations incorporated or doing business in that state. It then provides that when, upon such examination, he finds a stated condition, "he shall communicate the fact to the attorney general, who shall apply to the district court * * * for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a distribution of its effects and appoint a receiver therefor."

The Iowa supreme court has had occasion to pass upon the effect of proceedings under this statute, in the case of State ex rel. Attorney General v. Fidelity Loan & Trust Co., 113 Iowa, 439, 85 N. W. 638. The court in that case held that while the corporation had the right of appeal from a decree of dissolution, if the decree was acquiesced in and not appealed from, it became final and that "from the time of that entry the corporation has been dead, all its agencies ended, its employes, including attorneys, discharged; and it put, without exception or notice of appeal, beyond all future corporate activity. The effect was to 'put an end to its existence for all purposes whatsoever, and to destroy every one of its faculties so that thereafter it can neither make nor take contracts, nor sue or be sued, and so that all debts to or from it became extinguished, and all actions by and against it abated.'" * * * "To a corporation dissolution is as final as death to a person." This is the prevailing rule elsewhere (8 Fletcher, Enc. Corp., sec. 5564, note 41, and cases there cited.

Appellants contend that the order or decree of the Iowa court rendered on September 25, 1931, because of its word-

[fol. 75] ing did not terminate the existence of the surety company, but simply adjudged that at some future time it would be dissolved. From the record it appears that Clark was first appointed temporary receiver on September 11, and thereafter, upon the filing of amendments to the petition in the Iowa court, an order was made directing the surety company to show cause "why its business should not be forthwith dissolved and a receiver appointed to wind up its affairs." The decree that followed adjudged "that under and in accordance with the provisions of section 8964, of the Code of 1927, of the state of Iowa, the defendant Surety Company, shall be dissolved and its effects distributed."

Conceding that the decree of the Iowa court resulted in a present dissolution of the surety company, the question arises: Did the action brought by the appellants abate?

The following provision is found in section 6013, Revised Codes of 1921:

"Nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred."

This section has not be- construed by this court. Colorado has substantially the same legislative enactment. (Compiled Laws of Colorado 1921, sec. 2300.) Likewise the state of Illinois. (Sec. 14, Chapter 32, Hurd's Revised Statutes.) The simliar provisions noted have been construed by the supreme court of each of these states. The supreme court of Colorado, in the case of Kipp v. Miller, 47 Colo. 598, 108 Pac. 164, 135 A. S. R. 236), construing their statute, said:

"The question is, can the suit be maintained against the bank, it having been instituted after the expiration of the bank's charter? We answer in the affirmative, since the cause of action arose while the charter was still in force and the bank a going concern. The dissolution of the bank did not deprive creditors of a remedy against it, although sought to be applied after that time. The right of action by the creditor is clear and undisputed, and the remedy is preserved to him by express statute. Section 509, Mills' Ann. Stats., reads as follows: 'The dissolution for any cause whatever of corporations created as aforesaid, shall not take away or impair any remedy given against such [fol. 76] corporations, its stockholders, or officers, for any liabilities incurred previous to its dissolution.' "

That court reached the same result in the following cases construing the same statute: Steinhauer v. Colmar, 11 Colo. App. 494, 55 Pac. 293; Lucifer v. Buster, 64 Colo. 179, 171 Pac. 61; Dutton Co. v. Fitzpatrick, 69 Colo. 229, 193 Pac. 549. The same result was reached by the Circuit Court of Appeals for the eighth circuit construing the Colorado statute. (Hazard v. Park, 294 Fed. 40.)

The supreme court of Illinois, in the case of Singer & Talcott Co. v. Hutchinson 176 Ill. 48, 51 N. E. 622, construing the statute of that state, speaking with reference to a dissolved corporation, said:

"These sections, therefore, continue its life, for the respective periods stated, as an entity, so that it could sue or be sued as a party to the action, and therefore its rights, as such party, are conserved the same as the rights of other parties to actions."

Clearly, if the action of appellants were held to have abated upon the entry of a decree of dissolution by the Iowa court, their remedy, which accrued long prior thereto, would be impaired. "Impaired" means to make worse, to lessen the power, to weaken, to enfeeble, to deteriorate. (Ex parte Harrison, 212 Mo. 88, 110 S. W. 709.) The action, if against a domestic corporation, would not abate; and, as we shall presently see, the same rule is applicable to a foreign corporation.

The question of continuing actions by or against a corporation after its dissolution depends upon the laws of the state in which the action is pending, and a foreign statute relating thereto is of no avail. (1 C. J. 137; Sturges v. Vanderbilt, 73 N. Y. 384; Simmott v. Hamman, 141 N. Y. Supp. 505.)

Section 11 of Article XV of our Constitution provides:

"And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state."

[fol. 77] Our legislature in 1917 enacted Chapter 149, now section 6659, Revised Codes 1921, as follows: "All foreign corporations licensed to do business in the state of Montana

shall be subject to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the laws of this state, and shall have no other or greater powers." Under the quoted section, when the surety company was licensed to do business in the state of Montana, it became subject to the liabilities and restrictions then imposed upon corporations of like character organized under the laws of this state. Suits against domestic corporations do not abate upon the entry of a decree of dissolution, and the same rule, by virtue of this statutory provision, must apply to a foreign corporation.

It is frequently said by the text writers and in decisions that the laws of the forum continuing the life of a corporation will not be extended to a foreign corporation dissolved under the laws of the state of its domicile. (8 Thompson on Corporations, sec. 6518.) But these statements all relate to statutes enacted with reference to the survival of domestic corporations after dissolution for purposes of suit. However, an examination of these authorities reveals the fact that no statute, either identical with or similar to section 6659, Revised Codes of 1921, was under consideration.

Many authorities are found in the books to the effect that a personal judgment cannot be obtained against a dissolved corporation, which is a correct statement of what might be termed the common-law rule. Substantially all the states now have survival statutes which enable actions to be maintained and judgments rendered against domestic corporations subsequent to dissolution, as is disclosed by the elaborate note in 47 A. L. R. 1397 et seq., wherein the statutory provisions and decisions of the respective states are collated.

We have searched in vain to find either of these rules applied in any jurisdiction having a statute similar to our own, above noted. Therefore we hold that the suit of appellants against the surety company did not abate on the entry of the decree of dissolution in Iowa, and that the judgment entered herein is good and valid.

[fol. 78] It then remains to determine whether the levy of the execution was valid. Solution of this question depends upon the effect of the order appointing Crichton receiver. Appellants contend that this appointment was a nullity, because the complaint of Mieyr is not sufficient upon which

to base the appointment of a receiver in this state. They assert that a receiver will not be appointed at the instance of a general contract creditor.

A general creditor of a corporation has no right to the appointment of a receiver. (Scholefield v. Merrill Mortuarries, 93 Mont. —, 17 Pac. (2d) 1081; Pomeroy's Equity Jurisprudence, 4th ed., sec. 1548, p. 3630; Hollins v. Brierfield Coal & Iron Co., 150 U. S. 371, 37 L. Ed. 1113, 14 Sup. Ct. Rep. 127; French Bank Case, 53 Cal. 495; Smith v. Superior Court, 97 Cal. 348, 32 Pac. 322; State ex rel. Menzel v. District Court, 49 Nev. 145, 241 Pac. 317, 43 A. L. R. 1331.) It is sometimes said that courts on account of rapidly changing conditions in this country are gradually relaxing this rule: (Clark on Receivers, sec. 187, subd. a.) The reason for the relaxation of this rule is the result of statutory enactments, instead of the growth and change of judicial decisions.

The case of Brunner v. York Bridge Co., 78 W. Va. 702, 90 S. E. 233, 1 A. L. R. 643, holds that a creditor of a corporation may make application for the appointment of an ancillary receiver. The opinion in the case considers the right of a creditor to secure the appointment of a receiver as being axiomatic. Under the provisions of section 2286 of the West Virginia Statutes of 1906, in force at the time the decision was promulgated, the right to general creditors of corporations to secure the appointment of a receiver is expressly granted. The case of Popper v. Supreme Council etc., 70 N. Y. Supp. 637, is likewise based upon statutory authority for the appointment of receivers of both domestic and foreign corporations upon the application of a general creditor. An examination of the statutes of the various states reveals the fact that the legislatures thereof have from time to time increased the grounds for the appointment of receivers, and decisions from foreign jurisdictions must be read in the light of the existing statutes.

Our own Code, sections 9301 and 9303, enumerates the grounds for the appointment of receivers. Indentical stat- [fol. 79] utes obtain in California and Nevada. The California court, in the French Bank Cases, supra, said:

"But there is no statute of this state, none to which we have been pointed, which undertakes to confer upon a private person, either as stockholder or creditor, the right to maintain an action to dissolve a corporation upon the

ground that it is insolvent, or to obtain relief by seizing its property out of the hands of its constituted management, and placing it in the hands of a receiver."

The petition of the respondent Mieyr does not reveal that he occupied any other status than that of a general creditor of the Federal Surety Company.

A receiver will not be appointed unless the applicant has no other plain, speedy or adequate remedy. (Montana Ranches Co. v. Dolan, 53 Mont. 397, 164 Pac. 306.) The cause of action which Mieyr had against the Federal Surety Company, as disclosed by his complaint, was upon an express contract for the direct payment of money, and he had ample means to secure the payment of his indebtedness by obtaining the issuance and levy of a writ of attachment. (State ex rel. Nauman v. Pondera Valley State Bank, 77 Mont. 1, 248 Pac. 207; Jenkins v. First National Bank, 73 Mont. 110, 236 Pac. 1085; State ex rel. Barnett v. Reynolds, 68 Mont. 572, 220 Pac. 525.)

Mieyr had the right at the time he attempted to secure the appointment of a receiver, to attach the property of the Federal Surety Company in the state of Montana, unless the appointment of a receiver in Iowa would prevent the exercise of that right.

Even though it be conceded that the appointment of the receiver in the state of Iowa operated to transfer the property of the defunct surety company to him, such involuntary assignment in aid of a statutory judicial proceeding will not be recognized outside of the jurisdiction of the appointment, where the rights of domestic creditors are involved, if the receiver has not obtained possession of the property and where the creditors have obtained rights or liens upon the property even after the appointment in the foreign jurisdiction.

In Pomeroy's Equitable Remedies, section 1674, page 3896, 4th ed., it is said:

[fol. 80] "But where the receiver has not yet collected the fund or taken the property into his possession, and creditors or others have obtained rights or liens upon the property or fund in the state where it is situated, some distinctions must be observed. If the appointment of the receiver is involuntary, especially in aid of a statutory judicial proceeding, the prevailing doctrine seems to be that, where

the rights of domestic creditors are involved, the assignment will not be recognized outside of the jurisdiction of appointment."

The following authorities support the text quoted: Security Trust Co. v. Dodd, Mead & Co., 173 U. S. 624, 43 L. Ed. 835, 19 Sup. Ct. Rep. 545; Cole v. Cunningham, 133 U. S. 107, 129, 33 L. Ed. 538, 10 Sup. Ct. Rep. 269; Catlin v. Wilcox Silver Plate Co., 123 Ind. 477, 18 Am. St. Rep. 338, 8 L. R. A. 62, 24 N. E. 250; Gray v. Covert, 25 Ind. App. 561, 81 Am. St. Rep. 117, 58 N. E. 731; Ward v. Continental Pipe Co., 71 Conn. 345, 71 Am. St. Rep. 207, L. R. A. 706, 41 Atl. 1057; Gilbert v. Hewetson, 79 Minn. 326, 79 Am. St. Rep. 486, 82 N. W. 655.

When the transfer of a debtor's property is the result of a judicial proceeding, there is no provision of the Constitution which requires the courts of another state to carry it into effect, and as a general rule no state court will do this to the prejudice of the citizens of its own state (Reynolds v. Adden, 136 U. S. 348, 34 L. Ed. 360, 10 Sup. Ct. Rep. 843; Zacher v. Fidelity Trust Co., 106 Fed. 593).

The petition of Mieyr for the appointment of a receiver was insufficient, in that he, being a general creditor, had no right to the appointment of a receiver and had an adequate remedy by which he could be fully protected, namely, the issuance and levy of a writ of attachment.

The property of the Federal Surety Company within the state of Montana at the time of the levy of the execution by Williard et al., not being in possession of the Iowa receiver, was subject to levy, and the levy made under the execution in May, 1932, is good and valid.

The judgment and orders appealed from are reversed and the cause remanded for further proceedings in the district court in accordance with the views herein expressed.

[fol. 81] Mr. Justice ANGSTMAN, dissenting:

I am unable to concur in the views of my associates. The majority opinion concedes that the Iowa decree worked a present dissolution of the surety company. With this I agree, and shall discuss the remaining questions on that basis.

The majority opinion, so far as it holds that whether an action may be commenced or continued against a foreign

corporation after its dissolution by decree of the court of its domicile depends upon the laws of the state in which the action is pending, is in my opinion erroneous. I realize that there is dictum in some cases sustaining that view, and that a limited few cases so hold. The overwhelming weight of authority and the better-reasoned cases hold that whether a dissolved corporation is continued in existence for the purpose of maintaining or defending actions for a personal judgment, must be determined by the laws of its domicile, and that laws of the forum continuing the life of a corporation will not be extended to a foreign corporation dissolved by the laws of its domicile. (8 Thompson on Corporations, sec. 6518, note 7; Marion Phosphate Co. v. Perry, 74 Fed. 425, 33 L. R. A. 252; Kinsler v. Casualty Co. of America (Neb.), 172 N. W. 33; Remington v. Samana Bay Co., 140 Mass. 494, 5 N. E. 292; Fites v. National Life Assn. of Hartford, 130 Ala. 413, 30 So. 374; Oklahoma Natural Gas Co. v. Oklahoma, 273 U. S. 257, 71 L. Ed. 634; Riddell v. Rochester German Ins. Co., 35 R. I. 45, 85 Atl. 273; Hunt v Columbian Ins. Co., 55 Me. 290, 92 Am. Dec. 592; Mattson v. Kennecott Mines Co., 101 Wash. 12, 171 Pac. 1040; Harris-Woodbury Lumber Co. v. Coffin, 179 Fed. 257, affirmed in 187 Fed. 1005; Robinson v. Mutual Reserve Life Ins. Co., 182 Fed. 850; Martyne v. American Union Fire Ins. Co., 216 N. Y. 183, 110 N. E. 502; Atlantic Dredging Co. v. Beard, 130 N. Y. Supp. 4; Gulledge Bros. Lumber Co. v. Wenatchee Land Co., 115 Minn. 491, 132 N. W. 992.)

The laws of Iowa do not continue the life of a corporation dissolved by decree of court. (State of Iowa v. Fidelity Loan & Trust Co., 113 Iowa 439, 85 N. W. 638.) No personal judgment could be taken against the surety company after its dissolution. (MacRae v. Kansas Piano Co., [fol. 82] 69 Kan. 457, 77 Pac. 94; First National Bank of Selma v. Colby, 21 Wall. 609, 22 L. Ed. 687; Combes v. Milwaukee & M. R. Co. (Wis.), 62 N. W. 89, 27 L. R. A. 369; Venable v. Granite Co., 135 Ga. 508, 69 S. E. 822, 32 L. R. A. (n. s.) 446; Oklahoma National Gas Co. v. Oklahoma, supra; Morgan v. New York B. & L. Assn. (Conn.), 46 Atl. 877; Grossman v. Vivienda Water Co. (Cal.) 89 Pac. 335; United States Trust Co. v. Pennsylvania Surety Co., 259 Mich. 442, 243 N. W. 311.)

When a corporation is dissolved according to the laws of its domicile, it becomes a dissolved corporation every-

where, dead in every other state as well as in the state of its domicile, and an action against such foreign corporation abates on its dissolution. (8 Thompson on Corporations, 3d ed., sec. 6518; 8 Fletcher Cyc. Corporations, secs. 5810, 8582.) The decree of the Iowa court dissolving the surety company is entitled to full faith and credit in this state on that issue. (Cogliano v. Furgeson, 245 Mass. 364, 139 N. E. 527; Morgan v. New York B. & L. Assn., supra; United States Trust Co. v. Pennsylvania Surety Co., supra.)

While there is a diversity of views on the question, the better reasoned cases hold that a judgment obtained against a corporation after its dissolution is void and subject to collateral attack. (Grossman v. Vivienda Water Co., supra; Newhall v. Western Zinc Min. Co. (Cal.), 128 Pac. 1040; Panzee Hamilton Co. v. Bray (Cal.), 274 Pac. 769; Remington v. Samana Bay Co., supra; Garrett v. Pilgrim Mines Co., 47 Idaho 595, 277 Pac. 567; Marion Phosphate Co. v. Perry, supra; 8 Thompson on Corporations, 2d ed., sec. 6519; 8 Fletcher Cyc. Corporations, sec. 5811; 7 R. C. L. 739.)

And while there is authority to the contrary, the weight of authority supports the view that "if a corporation is dissolved pending an action against it, the action abates by operation of law without any plea in abatement, so that no valid judgment can be rendered for or against it, and the objection can be raised at any time." (1 C. J. 135, and cases cited, including that of Pendleton v. Russell, 144 U. S. 640, 36 L. Ed. 574, 12 Sup. Ct. Rep. 746.)

Section 6013, Revised Codes 1921, is relied upon in the majority opinion. It provides, in part, that the dissolution [fol. 83] of any corporation does not "take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred." Conceding for the purpose of this discussion only, that the laws of Montana determine whether the action of appellants abated upon the dissolution of the company in Iowa, this section would be of no avail to them. Obviously it has application only to domestic corporations. It is only domestic corporations that may be dissolved by action taken under this and the preceding sections.

Section 6659 is also relied upon. It provides that "all foreign corporations licensed to do business in the state

of Montana shall be subject to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the laws of this state, and shall have no other or greater powers." Its provisions, like those of section 6212, have no application to a corporation that has ceased to exist. (Robinson v. Mutual Reserve Life Ins. Co., 182 Fed. 850.) At most it is but a legislative declaration of the principle set forth in section 11 of Article XV of our Constitution. If section 6013 burdens a domestic corporation with life after its dissolution, the position of appellants in my opinion would not be affected by that fact. "The mere fact that a burden is placed upon domestic corporations from which foreign corporations are exempt does not operate to bring foreign corporations within the provisions of a law intended to apply solely to domestic corporations." (Uihlein v. Caplice Commercial Co., 39 Mont. 327, 102 Pac. 564.)

If there be merit in the claim that section 6013, when construed as applicable to domestic corporations only, has the effect of conferring greater rights and privileges upon foreign than upon domestic corporations, its utmost effect would be to condemn the statute as applied to domestic corporations, and this question could be raised only by a domestic corporation thus discriminated against. (Uihlein v. Caplice Commercial Co., supra.) But the effect of construing section 6013 as applicable only to domestic corporations does not give foreign corporations greater rights or privileges than domestic corporations. At most it places creditors of a domestic corporation in a different position than creditors of a foreign corporation. Its provisions [fol. 84] measure the rights and privileges of creditors, and not the corporation itself.

I fail to see, however, wherein it can be said that even domestic creditors of the surety company because formed and dissolved under the laws of Iowa, are not enjoying the same rights and privileges as they would if the corporation had been created and dissolved under the laws of this state. Had it been created under the laws of Montana and here dissolved, the remedy preserved to a creditor by section 6013, and section 6659 would be nothing more than the right to proceed to judgment and have the judgment allowed as a claim in the receivership proceedings to share pro rata with other creditors. (8 Thompson on Corporations, sec. 6324, note 65; 53 C. J. 124; Richle v. Margolies,

279 U. S. 218, 73 L. Ed. 669; Martyne v. American Fire Ins. Co., 216 N. Y. 183, 110 N. E. 502.) That right is preserved to appellants here without the necessity of proceeding to judgment, and the dissolution in Iowa without continuance of the corporate life does not deprive them of any remedy which would be accorded to a creditor of a dissolved domestic corporation under like circumstances.

It is my opinion that the judgment of appellants is a nullity and, in consequence, that no lien was obtained by virtue of the levy of execution. But if the judgment of appellants be regarded as valid, I am still unable to subscribe to the conclusion announced in the majority opinion.

I think the court is in error in holding that an ancillary receiver may not be appointed at the instance of a general creditor. Our statute provides that a receiver may be appointed in an action "by a creditor to subject any property or fund to his claim, * * * where it is shown that the property or fund is in danger of being lost, removed, or materially injured." (Sec. 9301, Rev. Codes 1921.)

The complaint here is on behalf of all creditors, and charges that the foreign receiver is removing the assets, and that unless a receiver be appointed, the funds would be dissipated and lost to the creditors.

We are here dealing with the appointment of an ancillary receiver in aid of the main receivership proceedings initiated in the Iowa courts. For the appointment of an ancillary receiver a creditor may make application. (53 C. J. 406; Popper v. Supreme Council etc., 70 N. Y. Supp. 637; Brunner v. York Bridge Co., 78 W. Va. 702, 90 S. E. [fol. 85] 233, 1 A. L. R. 643; Thornley v. J. C. Walsh Co., 200 Mass. 179, 86 N. E. 355.) "The better practice is for one who has an absolute right to sue in a foreign jurisdiction, such as a party to the original suit, or a creditor or a stockholder, to bring suit there, and ask for the appointment of an ancillary receiver." Clark on Receivers, sec. 318, subd. [a].) More particularly should this be the rule where, as here, the creditor, Mieyr, had confronting him the decree of the Iowa court adjudging that the corporation had been dissolved on September 21, 1931. This was sufficient basis upon which to justify the allegation made in his complaint that the property in this state was not subject to attachment or execution, dissolution has that effect, 8 Thompson on Corporations, sec. 6520), and to

justify the court in assuming jurisdiction to appoint the ancillary receiver on his application.

Nor does the case of Scholefield v. Merrill Mortuaries, 93 Mont. —, 17 Pac. (2d) 1081, militate against this view. In that case there had been no dissolution of the corporation, and no primary receiver appointed for the purpose of winding up the affairs of the corporation preliminary to dissolution. The primary receivership proceedings there involved did not look to the dissolution of the corporation, but had the effect of hindering and delaying creditors of a going concern. The proceedings in this state in that case were, as this court stated, "purely a matter of the appointment of a receiver pendente lite."

The fact that the assets had not yet come to the possession of the receiver when appellants made their levy, I think, is immaterial. The courts have the right to interfere summarily before property has passed to the possession of the receiver in order to aid the receiver in acquiring possession (53 C. J. 116). This is because the title of the receiver (8 Thompson on Corporations, sec. 6325) takes effect from the date of his appointment (Id., sec. 6326).

The trial court's function in a case of this kind was clearly expressed in Sands v. Greeley, 88 Fed. 132, 133, 31 C. C. A. 426, where the court said:

"When the administration extends over assets located in several jurisdictions, it is often convenient to apply, in advance, for the assistance of the different courts; hence the practice has become common of applying for auxiliary or ancillary appointments. When such an application is [fol. 86] made, the court to which it is addressed exercises its own original jurisdiction. The decree in the court of the domicile of the corporation is evidence in every other state that the corporation is insolvent, and that a proper case exists in that state for the appointment of a receiver, and it is to be respected accordingly, in obedience to the constitutional provision whereby full faith and credit is to be given in each state to the records and judicial proceedings of every other state in the Union. But it is for the court to which the application is made to decide what remedy it should extend in the particular case, and whether the proper administration of the assets requires the appointment of a receiver. Ordinarily, in comity to the proceeding of another court of co-ordinate jurisdiction, it will

appoint an ancillary receiver, and assume administration in aid of the primary receiver (Trust Co. v. Miller, 33 N. J. Eq. 155). When it appoints a receiver, the officer becomes its officer, and is completely amenable to its control, and it matters not whether he is called an ancillary receiver or merely a receiver. His title to the assets within the jurisdiction is derived from its decree, and does not depend upon comity. The assets are in its custody, and are to be disposed of as equity and the orderly administration of justice require. Its judgments and decrees in respect to these assets must be accepted as conclusive by all other courts. 'Where a receiver, administrator, or other custodian of an estate is appointed by the courts of one state, the courts of that state reserve to themselves full and exclusive jurisdiction over the assets of the estate, within the limits of the state' (Reynolds v. Stockton, 140 U. S. 254, 11 Sup. Ct. 773, 35 L. Ed. 464). It rests in the discretion of the court appointing the receiver whether the assets within its jurisdiction shall be distributed under its own direction or shall be transmitted to the primary receiver (United States v. Coxe, 18 How. 105, 15 L. Ed. 299). It is eminently proper that claimants residing within its jurisdiction should be relieved from the expense and inconvenience of proving their claims in other jurisdictions, and that provision should be made for securing to them equality of distribution in respect to the whole assets of the corporation; but there is no hard and fast rule to control the discretion of the court in making such distribution of the assets as shall be just to all creditors, and ultimately effect a ratable distribution of all the property of the cor- [fol. 87] poration (Buswell v. Supreme Sitting, 161 Mass. 224, 36 N. E. 1065, 23 L. R. A. 846; Baldwin v. Hosmer, 101 Mich. 119, 59 N. W. 432, 25 L. R. A. 739)."

Upon the appointment of the ancillary receiver the property was brought in the custody of the court and was not subject to execution (53 C. J. 131; 8 Thompson on Corporations, Ed. ed., sec. 6324). Nor does the fact that the court granted leave to make the levy alter the situation. That leave was granted only if Crichton's appointment should be revoked on appeal, and with the understanding that no preference over other creditors was given. The order granting leave was subsequently revoked.

The rule is that in the handling of the assets by the ancillary receiver "preference will be given to domestic creditors in the court appointing the ancillary administrator if it appears that there is danger of discrimination against them in the forum of the original receivership, but only so far as is necessary to counteract such discrimination. A court in which ancillary receivership is pending will protect the rights of the citizens of its own state and those of other states having claims which ought in equity to be brought under its own protection, and it may direct final distribution of the assets in its hands, but where there are no rights entitled to the particular protection of the ancillary court, it ordinarily will direct its receiver to turn over to the primary or domiciliary receiver the assets or funds in its hands after proper expenses of receivership have been taken out, and such turning over of funds rests ordinarily within the discretion of the ancillary court" (Clerk on Receivers, sec. 321, and cases cited).

Here the decree complained of makes ample provision to guarantee the local creditors freedom from discrimination as against the foreign creditors and assures the local creditors their ratable share of their claims with others of equal rank, as shown by the facts stated in the majority opinion, and that is all they are entitled to receive. (Brunner v. York Bridge Co., 78 W. Va. 702, 90 S. E. 233, 1 A. L. R. 643.)

In my opinion the judgment of the learned trial judge was correct and should be affirmed.

Albert H. Angstman, Associate Justice.

[fol. 88] IN SUPREME COURT OF MONTANA

7074

JOHN MIEYR, Respondent,

v.

FEDERAL SURETY COMPANY OF DAVENPORT, IOWA, a Corporation, et al., Respondents; D. A. Crichton, Ancillary Receiver, Respondent; Harry P. Williard et al., Appellants

JUDGMENT—April 1, 1933

This cause came on for decision and judgment. For reasons stated in the opinion, the judgment and orders

appealed from are reversed, and the cause remanded for further proceedings in accordance with the views expressed in the opinion. Opinion Per Curiam, concurred in by Mr. Chief Justice Callaway and Justices Matthews, Stewart and Anderson. Mr. Justice Angstman filed a dissenting opinion.

There being no further matter presented the court went into recess.

Lew. L. Callaway, Chief Justice.

Attest: J. W. Crosby, Clerk.

IN SUPREME COURT OF MONTANA

[Title omitted]

ORDER ON REHEARING—June 26, 1933

This cause came on regularly for hearing, upon respondents' motion for a rehearing, M. S. Gunn, Esq., and Loy J. Molumby, Esq., appearing as counsel for the respondents, and H. Leonard DeKalb, Esq., and Louis P. Donovan, Esq., appearing for the appellants. After argument by respective counsel the matter was submitted for decision.

There being no further matter presented the court went into recess.

Lew. L. Callaway, Chief Justice.

Attest: J. W. Crosby, Clerk.

[fol. 89] IN SUPREME COURT OF MONTANA

[Title omitted]

ORDER DENYING PETITIONER REHEARING—July 19, 1933

Respondents' motion for a rehearing is denied. Mr. Chief Justice Callaway and Mr. Justice Angstman, dissenting.

There being no further matter presented the court went into recess.

Lew. L. Callaway, Chief Justice.

Attest: J. W. Crosby, Clerk.

IN SUPREME COURT OF MONTANA

[Title omitted]

ORDER STAYING REMITTITUR OR MANDATE—Filed July 31, 1933

It appearing that E. W. Clark, as Receiver, one of the respondents above named, intends to make application to the Supreme Court of the United States for a writ of certiorari for the purpose of bringing before said Court for review the judgment of the above-entitled court in the above-entitled cause, and that there is reasonable ground for said application, upon motion of Gunn, Rasch, Hall & Gunn, Attorneys for said E. W. Clark, as Receiver, it is Ordered that the remittitur or mandate in said cause shall not issue, but shall be stayed until the 15th day of September, 1933, and that if on or before said date there is filed with the Clerk of this Court an affidavit of one of the attorneys for said E. W. Clark, as Receiver, showing that such application by proper petition for writ of certiorari has been made in compliance with the rules of the Supreme Court of the United States, that the said remittitur or mandate shall be stayed for a further period thereafter, and shall not issue before final disposition shall be made by the Supreme Court of the United States of said application or petition.

The stay hereby granted is upon the condition that there [fol. 90] be filed with the Clerk of this Court within 5 days from the date hereof a good and sufficient bond in the penal sum of $500.00, approved by one of the Justices of this Court, conditioned that if said application for such writ is not made on or before the 15th day of September, 1933, or if such application is not granted, or the said E. W. Clark, as Receiver, fails to make his plea good in the said Supreme Court of the United States, he will answer for all damages and costs which the appellants above named may sustain by reason of said stay.

Dated this 31st day of July, 1933.

Llewellyn L. Callaway, Chief Justice of the Supreme Court of the State of Montana.

[fol. 113] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 15, 1934

The petition herein for a writ of certiorari to the Supreme Court of the State of Montana is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

SEP 1

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 361

E. W. CLARK,
COMMISSIONER OF INSURANCE OF THE STATE OF IOWA, AS RECEIVER OF FEDERAL SURETY COMPANY, PETITIONER,

vs.

HARRY O. WILLIARD, W. W. WHEATON, AND C. W. HAY,
AS TRUSTEES OF GORDON CAMPBELL-KEVIN SYNDICATE, A COMMON-LAW TRUST, AND GORDON CAMPBELL-KEVIN SYNDICATE, A COMMON-LAW TRUST, RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA, AND BRIEF IN SUPPORT THEREOF.

REUEL B. COOK,
EDMOND M. COOK,
of Davenport, Iowa
M. S. GUNN,
of Helena, Montana
Counsel for Petitioner.

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